

DEPOSITION OF STAN SMITH, Ph.D.  
IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

MELINDA SERIN, JUDSON	)	
RUSS, LONG SOUI LIM, PERI	)	
KETTLER, GORDON REDNER	)	
and THOMAS J. SMITH,,	)	
	)	Case No.
Plaintiffs,	)	
	)	06-CV-1625 (JSG)
vs.	)	
NORTHERN LEASING SYSTEMS,	)	
INC., JAY COHEN, RICH	)	
HAHN and SARA KRIEGER,,	)	
	)	
Defendants.	)	

VIDEOTAPED DEPOSITION OF STAN SMITH, Ph.D.

October 29, 2010

Chicago, Illinois

Reported by:  
Sheri E. Liss  
Job No.: 20179

<p style="text-align: right;">2</p> <p>1 DEPOSITION OF STAN SMITH, Ph.D.  2 The videotaped deposition of DR. STAN  3 SMITH, called by the Plaintiff for examination,  4 taken pursuant to the Code of Civil Procedure and  5 the Rules of the Supreme Court of the State of  6 Illinois pertaining to the taking of depositions for  7 the purposes of evidence, taken before Sheri E.  8 Liss, CSR NO. 084-002600, a Certified Shorthand  9 Reporter within and for the State of Illinois,  10 Registered Professional Reporter, Certified Realtime  11 Reporter, at the offices of Regus, Two Prudential  12 Plaza, Suite 3500, Chicago, Illinois, on October 29,  13 2010 at the hour 9:00 o'clock a.m.  14  15  16  17  18  19  20  21  22  23  24  25</p>	<p style="text-align: right;">4</p> <p>1 DEPOSITION OF STAN SMITH, Ph.D.  2 APPEARANCES:  3 CHITTUR &amp; ASSOCIATES, P.C.  4 By: ANDREY STRUTINSKIY, ESQ.  5 (Via Videoconference)  6 286 Madison Avenue, Suite 1100  7 New York, New York 10017  8 (212) 370-0447  9 astrutinskiy@chittur.com  10 -and-  11 FINKELSTEIN &amp; PARTNERS, LLP  12 By: KEITH ALTMAN, ESQ.  13 (Via Videoconference)  14 1279 Route 300  15 Newburgh, New York 12551  16 (516) 795-6605  17 kaltman@lawampm.com  18 Appeared on behalf of the Plaintiffs;  19  20  21  22  23  24  25</p>																																				
<p style="text-align: right;">3</p> <p>1 DEPOSITION OF STAN SMITH, Ph.D.  2 I N D E X  3  4 STAN SMITH, Ph.D.  5  6 EXAMINATION PAGE  7  8 By Mr. Lillienstein 6  9  10  11  12  13  14  15  16  17  18  19  20  21  22  23  24  25</p> <p style="text-align: center;">E X H I B I T S</p> <table border="0"> <thead> <tr> <th>NO.</th> <th>MARKED/REFERRED TO</th> </tr> </thead> <tbody> <tr> <td>Exhibit D .....</td> <td>11</td> </tr> <tr> <td>Exhibit G .....</td> <td>12</td> </tr> <tr> <td>Exhibit W .....</td> <td>18</td> </tr> <tr> <td>Exhibit E .....</td> <td>35</td> </tr> <tr> <td>Exhibit B .....</td> <td>40</td> </tr> <tr> <td>Exhibit GG .....</td> <td>50</td> </tr> <tr> <td>Exhibit V .....</td> <td>55</td> </tr> <tr> <td>Exhibit X .....</td> <td>55</td> </tr> <tr> <td>Exhibit AA .....</td> <td>55</td> </tr> <tr> <td>Exhibit CC .....</td> <td>55</td> </tr> <tr> <td>Exhibit DD .....</td> <td>55</td> </tr> <tr> <td>Exhibit EE .....</td> <td>55</td> </tr> <tr> <td>Exhibit II .....</td> <td>55</td> </tr> <tr> <td>Exhibit KK .....</td> <td>55</td> </tr> <tr> <td>Exhibit NN .....</td> <td>55</td> </tr> <tr> <td>Exhibit PP .....</td> <td>55</td> </tr> <tr> <td>Exhibit AAA .....</td> <td>142</td> </tr> </tbody> </table>	NO.	MARKED/REFERRED TO	Exhibit D .....	11	Exhibit G .....	12	Exhibit W .....	18	Exhibit E .....	35	Exhibit B .....	40	Exhibit GG .....	50	Exhibit V .....	55	Exhibit X .....	55	Exhibit AA .....	55	Exhibit CC .....	55	Exhibit DD .....	55	Exhibit EE .....	55	Exhibit II .....	55	Exhibit KK .....	55	Exhibit NN .....	55	Exhibit PP .....	55	Exhibit AAA .....	142	<p style="text-align: right;">5</p> <p>1 DEPOSITION OF STAN SMITH, Ph.D.  2 APPEARANCES (continued):  3 MOSES &amp; SINGER, LLP  4 By: ROBERT LILLIENSTEIN, ESQ.  5 (Via Videoconference)  6 The Chrysler Building  7 405 Lexington Avenue  8 New York, New York 10174  9 (212) 554-7807  10 rlillienstein@mosessinger.com  11 -and-  12 FRANK/GECKER, LLP  13 By: JEREMY C. KLEINMAN, ESQ.  14 325 North LaSalle Street  15 Suite 625  16 Chicago, Illinois 60654  17 (312) 276-1400  18 jkleinman@fgllp.com  19 Appeared on behalf of the Defendants.  20  21 ALSO PRESENT:  22 CHRISTOPHER ERATH, (Telephonically) Expert Witness  23 JOHN DOODY, Videographer  24 REPORTED BY: SHERI E. LISS, CSR, RPR, CRR, CLR  25 CSR NO. 084-002600</p>
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<p style="text-align: right;">6</p> <p>1 DEPOSITION OF STAN SMITH, Ph.D.</p> <p>2 THE VIDEOGRAPHER: This is Tape No. 1 of</p> <p>3 the videotaped deposition of Dr. Stan Smith taken by</p> <p>4 the defense in the matter Serin et al., versus</p> <p>5 Northern Leasing Systems, Inc., et al., filed in the</p> <p>6 U.S. District Court, the Southern District of New</p> <p>7 York, Case No. 06-CV-1625 (JSG). This deposition is</p> <p>8 being held at Regus offices at 180 North Stetson</p> <p>9 Street, Suite 3500 in Chicago, Illinois on October</p> <p>10 29, 2010 at approximately 9:00 a.m.</p> <p>11 My name is John Doody from the firm</p> <p>12 of David Feldman Worldwide, and I'm the certified</p> <p>13 video specialist. The court reporter is Sheri Liss</p> <p>14 also in association with David Feldman Worldwide.</p> <p>15 Will counsel please introduce</p> <p>16 themselves.</p> <p>17 MR. LILLIENSTEIN: Robert Lillienstein</p> <p>18 representing the defendants for Moses &amp; Singer.</p> <p>19 MR. STRUTINSKIY: Andrey Strutinskiy from</p> <p>20 Chittur &amp; Associates representing the witness.</p> <p>21 MR. LILLIENSTEIN: Good morning, Dr. Smith.</p> <p>22 Just to complete the introductions here, who else is</p> <p>23 present with you in the room there? Could whoever</p> <p>24 is there identify themselves?</p> <p>25 MR. KLEINMAN: Jeremy Kleinman of the law</p>	<p style="text-align: right;">8</p> <p>1 DEPOSITION OF STAN SMITH, Ph.D.</p> <p>2 having been first duly sworn, was examined and</p> <p>3 testified as follows:</p> <p>4 EXAMINATION</p> <p>5 BY MR. LILLIENSTEIN:</p> <p>6 <b>Q. Dr. Smith, how much money has your</b></p> <p>7 <b>company charged to date for services you rendered on</b></p> <p>8 <b>behalf of the plaintiffs in this case?</b></p> <p>9 A. I believe I have an invoice. We charge</p> <p>10 a set amount for each of the four reports. My staff</p> <p>11 gave me a series of documents today for various</p> <p>12 different matters.</p> <p>13 <b>Q. So without looking at those documents</b></p> <p>14 <b>you don't know how much money your firm has changed?</b></p> <p>15 A. The invoice I have here is for four</p> <p>16 hours of deposition. We charge a set fee for the</p> <p>17 reports which is typically \$3165 per report.</p> <p>18 <b>Q. Okay. And do you know whether that's</b></p> <p>19 <b>what you charged in this case?</b></p> <p>20 A. Yes. And then we were told to bill you</p> <p>21 four hours for deposition. Did your colleague bring</p> <p>22 a check today?</p> <p>23 <b>Q. No, I don't believe he did.</b></p> <p>24 A. I thought it was a requirement by</p> <p>25 Mr. Chittur.</p>
<p style="text-align: right;">7</p> <p>1 DEPOSITION OF STAN SMITH, Ph.D.</p> <p>2 firm of Frank/Gecker LLP assistant counsel for the</p> <p>3 defendants.</p> <p>4 MR. LILLIENSTEIN: And on the conference</p> <p>5 call on my end here is Christopher Erath, who is the</p> <p>6 defendants' expert witness, just so we have that</p> <p>7 straight.</p> <p>8 Dr. Smith, I previously introduced</p> <p>9 myself to you but just for the record I'm</p> <p>10 representing defendants here. I'm going to ask you</p> <p>11 some questions about the opinion and reports that</p> <p>12 you've given in this case. I understand that you've</p> <p>13 been deposed many many times and that you've given</p> <p>14 trial testimony many, many times so I probably don't</p> <p>15 need to go through the instructions for you. I just</p> <p>16 ask that you wait for me to complete my answers</p> <p>17 before you give your answers and that if you do</p> <p>18 answer my question, that I will assume that you</p> <p>19 understood the question. Is that okay?</p> <p>20 A. Yes.</p> <p>21 THE VIDEOGRAPHER: Will the reporter please</p> <p>22 swear in the witness?</p> <p>23 (Whereupon, the witness was</p> <p>24 sworn.)</p> <p>25 DR. STAN SMITH,</p>	<p style="text-align: right;">9</p> <p>1 DEPOSITION OF STAN SMITH, Ph.D.</p> <p>2 <b>Q. No one has mentioned that to me.</b></p> <p>3 A. Okay.</p> <p>4 THE WITNESS: Andrey, do you know anything</p> <p>5 about that?</p> <p>6 MR. STRUTINSKIY: I would have to check on</p> <p>7 that.</p> <p>8 BY THE WITNESS:</p> <p>9 A. That was my understanding from</p> <p>10 Mr. Chittur.</p> <p>11 BY MR. LILLIENSTEIN:</p> <p>12 <b>Q. Is it your position that you're not</b></p> <p>13 <b>going to testify until you have a check?</b></p> <p>14 A. No. I just thought we could get the</p> <p>15 matter resolved perhaps by calling Mr. Chittur.</p> <p>16 <b>Q. Mr. Chittur, I understand, is in India?</b></p> <p>17 MR. STRUTINSKIY: He is in India.</p> <p>18 BY THE WITNESS:</p> <p>19 A. Okay.</p> <p>20 BY MR. LILLIENSTEIN:</p> <p>21 <b>Q. We will take care of that after the</b></p> <p>22 <b>deposition.</b></p> <p>23 A. Okay.</p> <p>24 <b>Q. So what is the amount you charge for --</b></p> <p>25 <b>in total?</b></p>

<p style="text-align: right;">10</p> <p>1           <b>DEPOSITION OF STAN SMITH, Ph.D.</b></p> <p>2           A.   3165 per report.</p> <p>3           <b>Q.   And it's your testimony that you</b></p> <p>4 <b>prepared four reports?</b></p> <p>5           A.   We have five.</p> <p>6           <b>Q.   Okay. Dr. Smith, before answering my</b></p> <p>7 <b>questions you tend to be looking at documents. I</b></p> <p>8 <b>prefer to get your answers without looking through</b></p> <p>9 <b>the documents. If you need to refer to a document,</b></p> <p>10 <b>tell me and we'll provide it for you or let you find</b></p> <p>11 <b>one. But, please, in the first instance when I ask</b></p> <p>12 <b>a question, give me your answer without looking at</b></p> <p>13 <b>documents unless I've given you a document and asked</b></p> <p>14 <b>you to look at it.</b></p> <p>15           A.   Mr. Lillienstein, I appreciate your</p> <p>16 request. I'm completely not bound by any requests</p> <p>17 you make. Unless there is some case law or a Court</p> <p>18 order, I will simply do my normal practice in</p> <p>19 deposition. Thank you.</p> <p>20           <b>Q.   Well, I'm going to ask you not to follow</b></p> <p>21 <b>your normal practice. I'm going to ask you to</b></p> <p>22 <b>answer the questions based on your recollection and</b></p> <p>23 <b>then if you need to refresh your recollection, then</b></p> <p>24 <b>you look at a document.</b></p> <p>25           A.   Mr. Lillienstein, I simply cannot follow</p>	<p style="text-align: right;">12</p> <p>1           DEPOSITION OF STAN SMITH, Ph.D.</p> <p>2 engagement letter which has been provided to</p> <p>3 Mr. Chittur.</p> <p>4           <b>Q.   Okay. And is this the engagement letter</b></p> <p>5 <b>in this -- for your work in this case?</b></p> <p>6           A.   Yes.</p> <p>7           <b>Q.   Is it your practice -- first of all, let</b></p> <p>8 <b>me ask, what is your position with the Smith</b></p> <p>9 <b>Economics Group?</b></p> <p>10           A.   I am the founder, the president, the</p> <p>11 chief bottle washer and the last guy to get paid.</p> <p>12           <b>Q.   Does the Smith Economics Group provide a</b></p> <p>13 <b>satisfaction guarantee to its clients?</b></p> <p>14           A.   We do. We promise them if we haven't</p> <p>15 delivered what they contracted for, that they should</p> <p>16 not pay a fee.</p> <p>17           <b>Q.   And has -- have you given that</b></p> <p>18 <b>satisfaction guarantee to Mr. Chittur in this case?</b></p> <p>19           A.   We've given it to all our many hundreds</p> <p>20 of clients over the years, including Mr. Chittur.</p> <p>21           MR. LILLIENSTEIN: Mr. Kleinman, can you</p> <p>22 show Dr. Smith Exhibit G, please.</p> <p>23                     (Whereupon, the document was</p> <p>24                     tendered.)</p> <p>25</p>
<p style="text-align: right;">11</p> <p>1           DEPOSITION OF STAN SMITH, Ph.D.</p> <p>2 your ad hoc direction. I will just do as I always</p> <p>3 do in deposition.</p> <p>4           MR. LILLIENSTEIN: Mr. Kleinman, can you</p> <p>5 show the witness Exhibit D.</p> <p>6           MR. KLEINMAN: Certainly.</p> <p>7                     (Whereupon, the document was</p> <p>8                     tendered.)</p> <p>9           MR. KLEINMAN: Do you wish the court</p> <p>10 reporter to mark the exhibits prior to their</p> <p>11 submission to the witness?</p> <p>12           MR. LILLIENSTEIN: They should be</p> <p>13 premarked.</p> <p>14           MR. KLEINMAN: They are.</p> <p>15           MR. LILLIENSTEIN: If the court reporter --</p> <p>16 I don't think it's necessary.</p> <p>17                     (Whereupon, the document was</p> <p>18                     tendered.)</p> <p>19           MR. KLEINMAN: The witness has been</p> <p>20 provided a copy of the document marked as Smith</p> <p>21 Exhibit D.</p> <p>22           MR. LILLIENSTEIN: We can see it.</p> <p>23 BY MR. LILLIENSTEIN:</p> <p>24           <b>Q.   Dr. Smith, can you identify Exhibit D?</b></p> <p>25           A.   Sure. It's a copy of my standard</p>	<p style="text-align: right;">13</p> <p>1           DEPOSITION OF STAN SMITH, Ph.D.</p> <p>2 BY MR. LILLIENSTEIN:</p> <p>3           <b>Q.   Dr. Smith, have you seen Exhibit G?</b></p> <p>4           A.   Yes.</p> <p>5           <b>Q.   Can you identify that for me, please.</b></p> <p>6           A.   It's a copy of a retainer request and a</p> <p>7 copy of a check in payment for \$2,500.</p> <p>8           <b>Q.   These are the only documents reflecting</b></p> <p>9 <b>any payments to your firm that we have received.</b></p> <p>10                    <b>Are there any other documents --</b></p> <p>11 <b>excuse me. Have there been any other payments to</b></p> <p>12 <b>your firm by Mr. Chittur's office?</b></p> <p>13           A.   I don't know. Not to my knowledge.</p> <p>14           MR. LILLIENSTEIN: I call for production of</p> <p>15 any documents for payments made by Mr. Chittur to</p> <p>16 your firm. And that's directed at counsel here, not</p> <p>17 to --</p> <p>18           MR. STRUTINSKIY: We'll take it under</p> <p>19 advisement.</p> <p>20 BY MR. LILLIENSTEIN:</p> <p>21           <b>Q.   Is any part of your compensation in this</b></p> <p>22 <b>matter contingent upon the outcome of the case?</b></p> <p>23           A.   No. I never do so.</p> <p>24           <b>Q.   Is it your understanding that you've</b></p> <p>25 <b>been paid thus far only \$2500?</b></p>

<p style="text-align: right;">14</p> <p>1           <b>DEPOSITION OF STAN SMITH, Ph.D.</b></p> <p>2       A. I don't know. I've been paid at least</p> <p>3       that. I don't know what else has been paid since</p> <p>4       July 7, 2010, the date of this check.</p> <p>5       <b>Q. And do you have any records there that</b></p> <p>6       <b>would refresh your recollection?</b></p> <p>7       A. No. I don't maintain the financial</p> <p>8       records in the same -- in the case file.</p> <p>9       <b>Q. What documents did you bring with you</b></p> <p>10      <b>here today?</b></p> <p>11      A. All the documents related to my case.</p> <p>12      To this case.</p> <p>13      <b>Q. Except for the payments?</b></p> <p>14      A. Those are related to administrative</p> <p>15      matters.</p> <p>16      <b>Q. Okay. Do you have such documents back</b></p> <p>17      <b>in the office?</b></p> <p>18      A. Yes.</p> <p>19      <b>Q. I would call for production of all</b></p> <p>20      <b>documents reflecting invoices to and payments by</b></p> <p>21      <b>Mr. Chittur's office. Is that okay?</b></p> <p>22      A. If there's anything in addition to this,</p> <p>23      if Mr. Chittur requests, I certainly would give him</p> <p>24      copies.</p> <p>25      <b>Q. Other than the payment for your</b></p>	<p style="text-align: right;">16</p> <p>1           DEPOSITION OF STAN SMITH, Ph.D.</p> <p>2       <b>Q. Have you finished your answer?</b></p> <p>3       A. Yes.</p> <p>4       <b>Q. Sir, you are billing this case the same</b></p> <p>5       <b>as if you had -- the same as if it were a personal</b></p> <p>6       <b>injury or wrongful death case?</b></p> <p>7       A. Or a simple commercial case.</p> <p>8       <b>Q. Okay.</b></p> <p>9       A. And actually, while it is all under one</p> <p>10      single litigation, I regard it as five cases that --</p> <p>11      from my non-legal point of view are simply</p> <p>12      consolidated.</p> <p>13      <b>Q. So your billings in total for this case</b></p> <p>14      <b>would be in excess of \$15,000 thus far?</b></p> <p>15      A. For each of the five cases they would be</p> <p>16      about \$3165 plus whatever today's deposition would</p> <p>17      be for each of the five cases.</p> <p>18      <b>Q. And is it your practice to receive that</b></p> <p>19      <b>payment, the \$3165, before you issue your report?</b></p> <p>20      A. No.</p> <p>21      <b>Q. What were you asked to do in this case?</b></p> <p>22      A. What I was asked to do is specified in</p> <p>23      the first paragraph of each of the five individual</p> <p>24      reports. I can read that into the record but, for</p> <p>25      example, for Mr. Russ, I was asked to analyze the</p>
<p style="text-align: right;">15</p> <p>1           <b>DEPOSITION OF STAN SMITH, Ph.D.</b></p> <p>2       <b>testimony today, do you expect to charge anything</b></p> <p>3       <b>else for your services?</b></p> <p>4       A. Trial testimony. If we go to trial.</p> <p>5       <b>Q. And how much do you charge for trial</b></p> <p>6       <b>testimony?</b></p> <p>7       A. \$315 per hour.</p> <p>8       <b>Q. And do you charge for preparation time?</b></p> <p>9       A. Yes.</p> <p>10      <b>Q. So that would be \$315 per hour for</b></p> <p>11      <b>preparation and trial testimony?</b></p> <p>12      A. Yes.</p> <p>13      <b>Q. Now, your retainer agreement and your</b></p> <p>14      <b>website says that for complex and commercial</b></p> <p>15      <b>litigation cases, that could result in a</b></p> <p>16      <b>substantially higher fee; is that correct?</b></p> <p>17      A. Yes.</p> <p>18      <b>Q. Is it fair to say that you have not</b></p> <p>19      <b>treated this as a complex or commercial litigation</b></p> <p>20      <b>case by your billings?</b></p> <p>21      A. It's not a complex commercial litigation</p> <p>22      case. I -- we would categorize it as a</p> <p>23      straightforward matter. Complex litigation can</p> <p>24      involve class action cases where I have three or</p> <p>25      four economists working simultaneously.</p>	<p style="text-align: right;">17</p> <p>1           DEPOSITION OF STAN SMITH, Ph.D.</p> <p>2       loss of payments -- the loss of the payments to</p> <p>3       Northern Leasing, the loss of time and out-of-pocket</p> <p>4       expense, the loss of business profits, the loss of</p> <p>5       credit expectancy and the loss of the enjoyment of</p> <p>6       life.</p> <p>7       <b>Q. What are you referring to now? What</b></p> <p>8       <b>document are you referring to?</b></p> <p>9       A. The July 16, 2010 report regarding</p> <p>10      Mr. Russ.</p> <p>11      <b>Q. And would that be the discounted or</b></p> <p>12      <b>undiscounted report?</b></p> <p>13      A. They both have the same first paragraph.</p> <p>14      <b>Q. What is the difference -- you've given</b></p> <p>15      <b>basically 10 reports in this case, haven't you?</b></p> <p>16      A. Well, I would say five reports, each of</p> <p>17      which has a modest variation.</p> <p>18      <b>Q. And what is that variation?</b></p> <p>19      A. That we have not discounted on the --</p> <p>20      the two variations are a discounted and an</p> <p>21      undiscounted report.</p> <p>22      <b>Q. And what did you mean by undiscounted</b></p> <p>23      <b>versus discounted?</b></p> <p>24      A. In the discounted report, the future</p> <p>25      projected losses are brought to present value as of</p>

<p style="text-align: right;">18</p> <p>1 DEPOSITION OF STAN SMITH, Ph.D.  2 October 1, 2010.  3 <b>Q. And in the undiscounted report, they are</b>  4 <b>not brought to present value?</b>  5 A. Yes. It's just simply the undiscounted  6 projections.  7 <b>Q. And other than that difference, there is</b>  8 <b>no difference in it; is that true?</b>  9 A. Other than that extra mathematical step  10 in the discounted report, the reports are the same.  11 <b>Q. So as I'm going through these reports,</b>  12 <b>there's no reason for me to ask questions separately</b>  13 <b>about the discounted versus the undiscounted unless</b>  14 <b>I'm addressing the discounted?</b>  15 A. Right. They should be, except for that,  16 identical.  17 <b>Q. I'm looking at the Lim report and so</b>  18 <b>make sure we're looking at the same document. Can</b>  19 <b>you --</b>  20 MR. LILLIENSTEIN: Jeremy, can you please  21 show the witness Exhibit W, please.  22 MR. KLEINMAN: Certainly.  23 (Whereupon, the document was  24 tendered.)  25</p>	<p style="text-align: right;">20</p> <p>1 DEPOSITION OF STAN SMITH, Ph.D.  2 <b>Q. What is the injury that occurred on May</b>  3 <b>1, 2001?</b>  4 A. The sustaining of the credit damage and  5 the emotional injury.  6 <b>Q. Is it your testimony that the</b>  7 <b>calculations you've made assume that the injury to</b>  8 <b>his credit and any emotional damage took place on</b>  9 <b>May 1, 2001?</b>  10 A. It commenced then. According to my  11 notes, as of May, 2001, Mr. Lim learned that  12 Northern Leasing was damaging him by pursuing a  13 claim against him.  14 <b>Q. And with respect all of the other</b>  15 <b>reports which refer to an injury, what injury are</b>  16 <b>you referring to?</b>  17 A. The very same type.  18 <b>Q. How did you determine the date of</b>  19 <b>Mr. Lim's injury?</b>  20 A. We were told that Mr. Lim learned of the  21 first suit and the damage to him in May. We took it  22 to be May 1. The truth is it could have been May 5  23 or 10, but our understanding was it was at the  24 beginning of May.  25 <b>Q. Who told you that?</b></p>
<p style="text-align: right;">19</p> <p>1 DEPOSITION OF STAN SMITH, Ph.D.  2 BY THE WITNESS:  3 A. Okay.  4 BY MR. LILLIENSTEIN:  5 <b>Q. Can you identify that, please, for me?</b>  6 A. That's the August 12, 2010 discounted  7 report I prepared on behalf of Mr. Lim.  8 <b>Q. And that report gives your opinions as</b>  9 <b>to the losses incurred by Mr. Lim in this case?</b>  10 A. Yes.  11 <b>Q. Okay. Now, if you look at the first</b>  12 <b>paragraph of that report, it says, "Dear</b>  13 <b>Mr. Chittur, you have asked me to calculate the</b>  14 <b>value of certain losses subsequent to the injuries</b>  15 <b>of Long Lim."</b>  16 <b>Do you see that?</b>  17 A. Yes.  18 <b>Q. What was the injury which you referred?</b>  19 A. The financial injury and the emotional  20 injury.  21 <b>Q. And then the second paragraph you say</b>  22 <b>that "Long Lim is an Asian married male who was born</b>  23 <b>on April 11, 1969 and injured on May 1, 2001."</b>  24 <b>Do you see that?</b>  25 A. Yes.</p>	<p style="text-align: right;">21</p> <p>1 <b>DEPOSITION OF STAN SMITH, Ph.D.</b>  2 A. Mr. Lim in his interview testimony.  3 <b>Q. Okay. Is it accurate to state that you</b>  4 <b>didn't speak directly with Mr. Lim?</b>  5 A. I had an interview with these plaintiffs  6 arranged and conducted at my direction. I have not  7 yet spoken directly with the plaintiffs.  8 <b>Q. So all of the work notes that</b>  9 <b>accompanied the various reports were prepared by</b>  10 <b>staff in your firm?</b>  11 A. No.  12 <b>Q. Okay. Who conducted the interview with</b>  13 <b>Mr. Lim?</b>  14 A. Mr. Ebling.  15 <b>Q. What's his first name?</b>  16 A. Brian.  17 <b>Q. And did Mr. Ebling conduct the interview</b>  18 <b>with all the other plaintiffs as well?</b>  19 A. I believe so, yes.  20 <b>Q. And you did not speak with any of the</b>  21 <b>other plaintiffs to this point?</b>  22 A. I have not spoken directly as yet.  23 <b>Q. Now, the work notes that I've seen</b>  24 <b>frequently refer to a DOL. What does DOL refer to?</b>  25 A. The date at which we begin calculating</p>



<p style="text-align: right;">22</p> <p>1 DEPOSITION OF STAN SMITH, Ph.D.</p> <p>2 the loss.</p> <p>3 <b>Q. And how did you determine the date of</b></p> <p>4 <b>loss in each case?</b></p> <p>5 A. I just answered that question, how we</p> <p>6 determined it to be May of 2001 for Mr. Lim, and the</p> <p>7 same would be true in each case.</p> <p>8 <b>Q. So your testimony is the date of loss</b></p> <p>9 <b>and the date of injury are the same?</b></p> <p>10 A. We calculated -- yes. We calculate the</p> <p>11 loss typically from the date of injury, unless</p> <p>12 there's some reason why they are not the same.</p> <p>13 <b>Q. And are you aware of any reasons in the</b></p> <p>14 <b>five reports that you prepared where those dates are</b></p> <p>15 <b>not the same?</b></p> <p>16 MR. STRUTINSKIY: Objection.</p> <p>17 BY THE WITNESS:</p> <p>18 A. Well, I can check each report, but my</p> <p>19 recollection is they are all the same.</p> <p>20 BY MR. LILLIENSTEIN:</p> <p>21 <b>Q. Okay.</b></p> <p>22 A. If you give me a moment.</p> <p>23 Well, for example, for Thomas</p> <p>24 Smith, some of the losses begin November 1, '03, but</p> <p>25 a -- we begin calculating another loss at a much</p>	<p style="text-align: right;">24</p> <p>1 DEPOSITION OF STAN SMITH, Ph.D.</p> <p>2 BY MR. LILLIENSTEIN:</p> <p>3 <b>Q. Tell me.</b></p> <p>4 A. Let's take it case by case. Which case</p> <p>5 do you want to start with?</p> <p>6 <b>Q. Dr. Lim -- Mr. Lim.</b></p> <p>7 A. What would you like to know about this</p> <p>8 case in particular aside from what's in my report?</p> <p>9 <b>Q. Did you assume that Northern Leasing</b></p> <p>10 <b>caused the loss?</b></p> <p>11 MR. STRUTINSKIY: Objection.</p> <p>12 BY THE WITNESS:</p> <p>13 A. I thought you asked that question about</p> <p>14 all five and I answered it.</p> <p>15 BY MR. LILLIENSTEIN:</p> <p>16 <b>Q. What's your answer to this question?</b></p> <p>17 A. The same as it was before, I made no</p> <p>18 assumption about liability. It's not an economic</p> <p>19 issue.</p> <p>20 <b>Q. Okay. And did you attempt to</b></p> <p>21 <b>investigate or analyze whether there were any causes</b></p> <p>22 <b>of the loss other than the defendants in this case?</b></p> <p>23 A. I've analyzed these claims for losses</p> <p>24 and I'm not responsible for attributing them to</p> <p>25 various defendants. So the answer is I don't act as</p>
<p style="text-align: right;">23</p> <p>1 DEPOSITION OF STAN SMITH, Ph.D.</p> <p>2 later time. If we go through each report, we can</p> <p>3 explain the details and the rationale. That's for</p> <p>4 example for Mr. Smith.</p> <p>5 Did you want me to check all five</p> <p>6 right now or go through them each as we proceed with</p> <p>7 each of the five cases?</p> <p>8 <b>Q. Why don't we do the latter.</b></p> <p>9 A. All right.</p> <p>10 <b>Q. Now, when you rendered your opinions in</b></p> <p>11 <b>this case as reflected in your report -- your</b></p> <p>12 <b>reports, would it be fair to assume that you assumed</b></p> <p>13 <b>that the defendants were all liable?</b></p> <p>14 A. No.</p> <p>15 <b>Q. Okay. Did you assume that they were not</b></p> <p>16 <b>liable?</b></p> <p>17 A. I had no reason to make any assumption</p> <p>18 about liability.</p> <p>19 <b>Q. Okay. Isn't it true that if there was</b></p> <p>20 <b>no liability, that there would be no damage?</b></p> <p>21 MR. STRUTINSKIY: Objection.</p> <p>22 BY THE WITNESS:</p> <p>23 A. You're getting into legal issues. I can</p> <p>24 tell you what I did and how I did it from an</p> <p>25 economic point of view.</p>	<p style="text-align: right;">25</p> <p>1 DEPOSITION OF STAN SMITH, Ph.D.</p> <p>2 an attorney or a private investigator or a fact</p> <p>3 investigator and the answer is no. I've</p> <p>4 investigated the losses and valued the losses. I am</p> <p>5 not opining or attributing these losses to any</p> <p>6 particular party or -- just assuming they came from</p> <p>7 events that came around the time that the individual</p> <p>8 claimants testified when they started.</p> <p>9 <b>Q. So you didn't assume that Northern</b></p> <p>10 <b>Leasing did anything to cause damage to these</b></p> <p>11 <b>people?</b></p> <p>12 MR. STRUTINSKIY: Objection. Asked and</p> <p>13 answered.</p> <p>14 BY THE WITNESS:</p> <p>15 A. I didn't assume anything one way or the</p> <p>16 other. Whatever is laid out in the complaint is all</p> <p>17 I know.</p> <p>18 BY MR. LILLIENSTEIN:</p> <p>19 <b>Q. And you assumed that to be true?</b></p> <p>20 A. I just read the complaint. I'll leave</p> <p>21 it to a judge and a jury to determine the liability</p> <p>22 issues.</p> <p>23 <b>Q. Well, what caused the loss to Mr. Lim?</b></p> <p>24 A. The credit damage that he sustained and</p> <p>25 the time that he spent seeking to reverse that along</p>

<p style="text-align: right;">26</p> <p>1 DEPOSITION OF STAN SMITH, Ph.D.</p> <p>2 with -- you need to -- along with payments that</p> <p>3 these claims were not due to Northern Leasing, the</p> <p>4 impact in his credit expectancy and the loss of his</p> <p>5 enjoyment of life.</p> <p>6 <b>Q. Did you assume that the credit damage</b></p> <p>7 <b>was caused by one of the defendants?</b></p> <p>8 A. You keep asking the same question in</p> <p>9 minute variations. And since you're an intelligent</p> <p>10 man, you could probably think of one billion</p> <p>11 variations and the answers will always be the same</p> <p>12 on each of the variations. I have not made an</p> <p>13 assumption one way or the other about causality in</p> <p>14 terms of which defendants or who caused it.</p> <p>15 <b>Q. You were not asked to prepare a report</b></p> <p>16 <b>regarding Peri Kettler; is that correct?</b></p> <p>17 A. So far as I know, I have not.</p> <p>18 <b>Q. Did you have any communications with</b></p> <p>19 <b>plaintiff's attorney regarding Peri Kettler?</b></p> <p>20 A. I don't recall as I sit here.</p> <p>21 <b>Q. Do you have any document there that</b></p> <p>22 <b>might refresh your recollection?</b></p> <p>23 A. Each of these -- well, just not a name I</p> <p>24 recognize. I have -- okay. I see a document here</p> <p>25 regarding Peri Kettler, but this is a file of</p>	<p style="text-align: right;">28</p> <p>1 DEPOSITION OF STAN SMITH, Ph.D.</p> <p>2 <b>damages?</b></p> <p>3 A. Well, I should say commenting on, yes.</p> <p>4 <b>Q. And in those cases have you stated that</b></p> <p>5 <b>the expert on the other side had improperly</b></p> <p>6 <b>calculated those damages?</b></p> <p>7 A. I don't know if I use the word</p> <p>8 "improper" but I may have a different point of view</p> <p>9 from time to time, as does your expert in this case.</p> <p>10 <b>Q. Have you -- do you recall any instance</b></p> <p>11 <b>where you've given testimony in which you argued on</b></p> <p>12 <b>behalf of a defendant that the calculation of</b></p> <p>13 <b>damages should be lower than that which the</b></p> <p>14 <b>plaintiff's expert said?</b></p> <p>15 A. Well, I can't recall about lower or</p> <p>16 higher but different.</p> <p>17 <b>Q. Have you ever given such testimony?</b></p> <p>18 A. Just what I said.</p> <p>19 <b>Q. Have you ever given testimony -- maybe,</b></p> <p>20 <b>I didn't understand your answer. Did you ever give</b></p> <p>21 <b>testimony where you gave an opinion that the</b></p> <p>22 <b>calculation of economic damages should be less than</b></p> <p>23 <b>that which the plaintiff's expert opined on?</b></p> <p>24 MR. STRUTINSKIY: Objection. Asked and</p> <p>25 answered.</p>
<p style="text-align: right;">27</p> <p>1 DEPOSITION OF STAN SMITH, Ph.D.</p> <p>2 documents that was not analyzed.</p> <p>3 <b>Q. So to the best of your recollection you</b></p> <p>4 <b>were not asked to analyze any of Peri Kettler's</b></p> <p>5 <b>losses?</b></p> <p>6 A. Correct.</p> <p>7 <b>Q. And the reason why we don't have your</b></p> <p>8 <b>report on that is not because you prepared one and</b></p> <p>9 <b>that it was not served but that you just never were</b></p> <p>10 <b>asked to do it?</b></p> <p>11 A. Correct.</p> <p>12 <b>Q. How many expert reports have you</b></p> <p>13 <b>produced over the last year?</b></p> <p>14 A. Several hundred.</p> <p>15 <b>Q. And over the last four years?</b></p> <p>16 A. Per year several hundred.</p> <p>17 <b>Q. And can you estimate the percentage of</b></p> <p>18 <b>those that are for plaintiffs and for defendants?</b></p> <p>19 A. In commercial cases it's about 50-50.</p> <p>20 In personal injury and wrongful death it's more for</p> <p>21 plaintiffs, about three quarters.</p> <p>22 <b>Q. And in the cases where you give expert</b></p> <p>23 <b>testimony on behalf of defendants in personal injury</b></p> <p>24 <b>cases, have you been asked to give testimony</b></p> <p>25 <b>questioning another expert's calculations of hedonic</b></p>	<p style="text-align: right;">29</p> <p>1 DEPOSITION OF STAN SMITH, Ph.D.</p> <p>2 BY THE WITNESS:</p> <p>3 A. What was the word before the word</p> <p>4 "damages" in your question?</p> <p>5 MR. LILLIENSTEIN: Could the court reporter</p> <p>6 read it back, please.</p> <p>7 (Whereupon, the record was</p> <p>8 read as requested.)</p> <p>9 BY THE WITNESS:</p> <p>10 A. The word you used was "economic," is</p> <p>11 that correct? That's what we heard here and that's</p> <p>12 what was transcribed.</p> <p>13 BY MR. LILLIENSTEIN:</p> <p>14 <b>Q. I'll rephrase the question.</b></p> <p>15 A. Did I hear it correctly the first time?</p> <p>16 Was it transcribed correctly the first time or not?</p> <p>17 <b>Q. I'm going to rephrase the question.</b></p> <p>18 A. I know you're going to rephrase it. I'm</p> <p>19 just curious, did you use the word "economic"?</p> <p>20 Because that's what was transcribed.</p> <p>21 <b>Q. I'm going to rephrase the question.</b></p> <p>22 A. Did the court reporter mistranscribe</p> <p>23 your words? I just need to know.</p> <p>24 <b>Q. Then you'll have to ask her.</b></p> <p>25 A. Well, no. Only you can tell us if she</p>



<p style="text-align: right;">30</p> <p>1 DEPOSITION OF STAN SMITH, Ph.D.</p> <p>2 has it right or wrong.</p> <p>3 <b>Q. Doctor, since we have a limited amount</b></p> <p>4 <b>of time, please don't --</b></p> <p>5 A. You're not interested whether the</p> <p>6 transcript reads correctly, am I correct?</p> <p>7 <b>Q. Whether it did or doesn't, I'm</b></p> <p>8 <b>rephrasing the question.</b></p> <p>9 A. It probably doesn't if you won't answer</p> <p>10 the question, but go ahead.</p> <p>11 <b>Q. Okay. Have you ever given testimony</b></p> <p>12 <b>where you've given an opinion that a plaintiff's</b></p> <p>13 <b>calculation of hedonic damages for reduction value</b></p> <p>14 <b>of life were too high?</b></p> <p>15 A. The first time the word was "economic"</p> <p>16 and I guess this time the word is "hedonic."</p> <p>17 <b>Q. The first time it was hedonic.</b></p> <p>18 A. I don't think she got what you just said</p> <p>19 because I was talking.</p> <p>20 <b>Q. The first time it was hedonic and she</b></p> <p>21 <b>probably understood it to be economic, but now we're</b></p> <p>22 <b>past that.</b></p> <p>23 A. Okay. I don't specifically recall about</p> <p>24 too high or too low, but I certainly would comment</p> <p>25 if it was not done correctly.</p>	<p style="text-align: right;">32</p> <p>1 DEPOSITION OF STAN SMITH, Ph.D.</p> <p>2 record, Mr. Lillienstein, you're trying to restate</p> <p>3 what the witness says.</p> <p>4 THE WITNESS: I'll forgive him for that.</p> <p>5 BY THE WITNESS:</p> <p>6 A. I'm just trying to clarify that what I</p> <p>7 said I think is somewhat less precise. We don't</p> <p>8 have the precise figures.</p> <p>9 BY MR. LILLIENSTEIN:</p> <p>10 <b>Q. You don't have them -- you don't recall</b></p> <p>11 <b>them as you sit there today, your office has them?</b></p> <p>12 A. We can take some trouble and investigate</p> <p>13 and add them up but we don't necessarily maintain</p> <p>14 them like a stock market ticker.</p> <p>15 <b>Q. Within the past month, how many cases</b></p> <p>16 <b>have you been asked to provide an expert report</b></p> <p>17 <b>involving the federal RICO claim?</b></p> <p>18 A. I testified a couple weeks ago, I</p> <p>19 believe, in Boston on that, including the loss of</p> <p>20 enjoyment of life, damages.</p> <p>21 <b>Q. What was the name of that case?</b></p> <p>22 A. It was Smith and DeSilva. They were two</p> <p>23 consolidated cases versus a whole handfull of</p> <p>24 plaintiffs, most of who were in the mortgage broker,</p> <p>25 mortgage banking business.</p>
<p style="text-align: right;">31</p> <p>1 DEPOSITION OF STAN SMITH, Ph.D.</p> <p>2 <b>Q. Within the past month how many cases</b></p> <p>3 <b>have you been asked to provide an expert report</b></p> <p>4 <b>involving personal injury or death?</b></p> <p>5 A. Probably over a dozen.</p> <p>6 <b>Q. And in the past year can you estimate</b></p> <p>7 <b>that?</b></p> <p>8 A. Just project that out. I said a couple</p> <p>9 hundred so somewhere over a hundred, possibly 200.</p> <p>10 <b>Q. And how many within the past month have</b></p> <p>11 <b>you -- how many cases have you been asked in the</b></p> <p>12 <b>past month to provide an expert report involving a</b></p> <p>13 <b>claim other than personal injuries or death?</b></p> <p>14 A. Perhaps a half a dozen times or more.</p> <p>15 <b>Q. So that would be about 18 total this</b></p> <p>16 <b>month?</b></p> <p>17 A. You're getting way too precise for me.</p> <p>18 <b>Q. Okay. Well, I'm asking you to give</b></p> <p>19 <b>answers and I am assuming that you're being precise</b></p> <p>20 <b>when you give the answers.</b></p> <p>21 A. I am, but you are switching words. When</p> <p>22 I say a half a dozen or so or a dozen or so, you</p> <p>23 then convert that to a precise number as opposed to</p> <p>24 the round -- the more imprecise that I used.</p> <p>25 MR. STRUTINSKIY: May I note for the</p>	<p style="text-align: right;">33</p> <p>1 DEPOSITION OF STAN SMITH, Ph.D.</p> <p>2 <b>Q. And it's your testimony that was a RICO</b></p> <p>3 <b>case?</b></p> <p>4 A. That's my understanding.</p> <p>5 <b>Q. And what was the nature of the loss in</b></p> <p>6 <b>those cases -- in that case?</b></p> <p>7 A. Some sort of a conspiracy to defraud the</p> <p>8 plaintiffs, forgery of signatures. Similar to this</p> <p>9 case, actually.</p> <p>10 <b>Q. And did you provide testimony in court</b></p> <p>11 <b>or at deposition?</b></p> <p>12 A. In court.</p> <p>13 <b>Q. And was that before a jury?</b></p> <p>14 A. Yes. The jury awarded substantial</p> <p>15 damages, including enjoyment of life damages in</p> <p>16 federal court.</p> <p>17 <b>Q. When was that testimony given?</b></p> <p>18 A. Eight, 10 days ago, something like that.</p> <p>19 <b>Q. And what court was that?</b></p> <p>20 A. Federal court, Boston.</p> <p>21 <b>Q. Did you spend any time preparing for the</b></p> <p>22 <b>deposition today?</b></p> <p>23 A. Yes.</p> <p>24 <b>Q. How much time did you spend?</b></p> <p>25 A. It was around a couple hours. I have</p>

<p style="text-align: right;">34</p> <p>1 DEPOSITION OF STAN SMITH, Ph.D.  2 some notes at the office about when I started and  3 stopped but I haven't computed it yet.  4 <b>Q. When was that done?</b>  5 A. Yesterday and this morning.  6 <b>Q. And did you review any documents for</b>  7 <b>preparation?</b>  8 A. The file. I should say all five files.  9 <b>Q. If you could just generally describe the</b>  10 <b>procedure that your office follows in getting a</b>  11 <b>report prepared from the first call to the actual</b>  12 <b>submission of the report.</b>  13 A. Well, we get a call, we get an  14 assignment, we get some documents. I hate to be too  15 general. But we then review the documents, analyze  16 the damages. I generally involve one or more staff  17 members to support me and produce the report, send  18 it off to the attorney.  19 <b>Q. Okay. What is the case information form</b>  20 <b>that you use?</b>  21 A. That's one of the documents that  22 typically we ask our client to fill out to give us a  23 basic initial orientation on each case. Often we  24 don't get it filled out but we try and informally  25 scratch one out on our own. Sometimes it's -- since</p>	<p style="text-align: right;">36</p> <p>1 DEPOSITION OF STAN SMITH, Ph.D.  2 <b>all clients?</b>  3 A. For complex cases it doesn't quite  4 apply, but when we're dealing with individuals and  5 damages to an individual, we typically use a form,  6 yes.  7 <b>Q. Is it important for you to know whether</b>  8 <b>there's a federal claim involved?</b>  9 A. Well, it's helpful -- look, you mean a  10 federal claim or whether a matter is in federal  11 court? There's a slight difference. Which did  12 you --  13 <b>Q. I was asking about a federal claim.</b>  14 A. You were asking about the federal claim.  15 That's what I thought.  16 It's helpful to know. Sometimes  17 certain federal claims are guided, depending upon  18 the judicial circuit, have some case law that would  19 impact how damages are computed in that particular  20 circuit. For example, Jones Act has certain  21 peculiarities, Section 1983 actions have certain  22 peculiarities.  23 <b>Q. Are you finished?</b>  24 A. Yes.  25 <b>Q. You were looking down.</b></p>
<p style="text-align: right;">35</p> <p>1 DEPOSITION OF STAN SMITH, Ph.D.  2 I am trained or I'm used to looking for certain  3 information on a case intake form, if we don't have  4 one filled out by the client, we then try and fill  5 one out on our own for certain basic things.  6 <b>Q. All right.</b>  7 MR. LILLIENSTEIN: Jeremy, can you show the  8 witness Exhibit E, please.  9 MR. KLEINMAN: Certainly.  10 (Whereupon, the document was  11 tendered.)  12 BY THE WITNESS:  13 A. Okay, I have looked at this Exhibit E.  14 BY MR. LILLIENSTEIN:  15 <b>Q. Can you tell me what these documents</b>  16 <b>are?</b>  17 A. This is all of the five case intake  18 forms or case information forms stapled together.  19 Most of them have Brian's initial at the top. He  20 assisted me in collecting information for this file  21 so that means that he scratched in the very limited  22 information that's on each one of these, which is  23 pretty much the name, date of birth, race and  24 gender.  25 <b>Q. Okay. Is this the form that he used for</b></p>	<p style="text-align: right;">37</p> <p>1 DEPOSITION OF STAN SMITH, Ph.D.  2 A. No, I'm just waiting for the next  3 question.  4 <b>Q. Okay. Do the RICO claims have any</b>  5 <b>peculiarities?</b>  6 A. Nothing extra that I'm aware of, but  7 again, I don't pretend to know everything about the  8 law. We just know some things about some claims,  9 not everything about all types of claims.  10 <b>Q. Now, I would like you to turn the page</b>  11 <b>to Page 606, the second page of the document.</b>  12 A. Okay.  13 <b>Q. And that section at the top says "Check</b>  14 <b>estimates you would like us to calculate."</b>  15 A. Yes.  16 <b>Q. What's the purpose of that section?</b>  17 A. To guide us, to give us an initial  18 understanding of the assignment. It's just a  19 preliminary orientation.  20 <b>Q. And in this case, turning back to the</b>  21 <b>first page, you were basically told this is a credit</b>  22 <b>damage case?</b>  23 A. Yes.  24 <b>Q. And that would be the same for all of</b>  25 <b>these plaintiffs, correct?</b></p>

<p style="text-align: right;">38</p> <p>1           <b>DEPOSITION OF STAN SMITH, Ph.D.</b></p> <p>2       A.   Certainly.</p> <p>3       <b>Q.   Now, in this -- looking again at Page</b></p> <p>4       <b>606, I guess it would be the second page of each</b></p> <p>5       <b>form, the third item in the box at the top says</b></p> <p>6       <b>"Value of life or loss of enjoyment to subject to</b></p> <p>7       <b>injury or death."</b></p> <p>8           <b>Do you see that?</b></p> <p>9       A.   Yes.</p> <p>10      <b>Q.   And that's checked off in every form,</b></p> <p>11      <b>isn't it?</b></p> <p>12      A.   Yes.</p> <p>13      <b>Q.   And --</b></p> <p>14      A.   I haven't checked every form, but</p> <p>15      probably. Given that we filled these out, it's</p> <p>16      likely that -- because it was our understanding that</p> <p>17      all the cases were to be analyzed in a similar</p> <p>18      fashion so I think that -- I think I just checked,</p> <p>19      and I think it's true on each of the five forms.</p> <p>20      <b>Q.   And injury in each of these cases is</b></p> <p>21      <b>what you testified to before?</b></p> <p>22      A.   Yes. The credit damage and the</p> <p>23      consequences.</p> <p>24      <b>Q.   Not a personal injury?</b></p> <p>25      A.   Well, you know, I'm not a legal expert,</p>	<p style="text-align: right;">40</p> <p>1           DEPOSITION OF STAN SMITH, Ph.D.</p> <p>2       <b>Q.   When you refer then to the emotional</b></p> <p>3       <b>damage, is that something other than loss of</b></p> <p>4       <b>enjoyment of life?</b></p> <p>5       A.   With respect to my assessment, no.</p> <p>6       <b>Q.   Let me show you another document. Loss</b></p> <p>7       <b>of enjoyment of life.</b></p> <p>8           <b>Doctor, I'm looking for it. It</b></p> <p>9       <b>does not seem to have made it into the box?</b></p> <p>10      A.   Well, I've got a couple hundred pages of</p> <p>11      information. Maybe we can make one up here.</p> <p>12      <b>Q.   Would you agree that hedonic damages</b></p> <p>13      <b>have typically been applied in personal injury,</b></p> <p>14      <b>wrongful death and civil right cases?</b></p> <p>15      A.   Often but not exclusively. Any</p> <p>16      instance -- they're applied any time there is -- any</p> <p>17      time someone sustains loss of enjoyment, it wouldn't</p> <p>18      matter what the origin of the claim is.</p> <p>19      <b>Q.   Okay.</b></p> <p>20      MR. LILLIENSTEIN: Jeremy, can you show the</p> <p>21      witness Exhibit B, please.</p> <p>22      MR. KLEINMAN: Certainly.</p> <p>23                   (Whereupon, the document was</p> <p>24                   tendered.)</p> <p>25</p>
<p style="text-align: right;">39</p> <p>1           DEPOSITION OF STAN SMITH, Ph.D.</p> <p>2       so if someone were to tell me that the emotional</p> <p>3       damages constitute a personal injury also, then I</p> <p>4       can't really tell you what the law is. Certainly</p> <p>5       it's not a car crash. Nobody had a truck hit them,</p> <p>6       that's true.</p> <p>7       <b>Q.   Are the emotional damages to which you</b></p> <p>8       <b>refer akin to pain and suffering?</b></p> <p>9       A.   Well, you ask a very interesting legal</p> <p>10      question. In the 50 states, that matter has been</p> <p>11      resolved differently. Most states hold loss of</p> <p>12      enjoyment of life as a separate compensable element</p> <p>13      of damage. I'm not sure how the federal circuits</p> <p>14      come out on the various different types of federal</p> <p>15      claims, but many states, but not the majority,</p> <p>16      include loss of enjoyment of life as a component of</p> <p>17      a larger, broader definition of pain, suffering and</p> <p>18      mental anguish.</p> <p>19           But I believe the experts in my</p> <p>20      field estimate and believe that the loss of</p> <p>21      enjoyment of life as calculated by using this</p> <p>22      standard methodology does not include pain,</p> <p>23      suffering and mental anguish but can be calculated</p> <p>24      independently of that, whether it's included in the</p> <p>25      broad definition or whether its own category.</p>	<p style="text-align: right;">41</p> <p>1           DEPOSITION OF STAN SMITH, Ph.D.</p> <p>2       BY MR. LILLIENSTEIN:</p> <p>3       <b>Q.   Can you identify that document,</b></p> <p>4       <b>Dr. Smith?</b></p> <p>5       A.   Yes. It's a, I think, not the most</p> <p>6       recent but a very recent staff list that we provide</p> <p>7       to clients so they can -- I assume you want to know</p> <p>8       why we have it or what it is. It's just a staff</p> <p>9       list, if that suffices.</p> <p>10      <b>Q.   These are the people that work for you?</b></p> <p>11      A.   Yeah. Not everybody.</p> <p>12      <b>Q.   But did anybody not on this list perform</b></p> <p>13      <b>any services in this case?</b></p> <p>14      A.   No. Other than scheduling or taking</p> <p>15      phone calls and things like that.</p> <p>16      <b>Q.   I believe that you mentioned Brian</b></p> <p>17      <b>Ebling before.</b></p> <p>18      A.   Yes.</p> <p>19      <b>Q.   He conducted the interviews?</b></p> <p>20      A.   At my direction, yes.</p> <p>21      <b>Q.   And do you know if anyone else conducted</b></p> <p>22      <b>those interviews with him?</b></p> <p>23      A.   No one would have.</p> <p>24      <b>Q.   So if there are other people's initials</b></p> <p>25      <b>on the work notes, what does that refer to?</b></p>

<p style="text-align: right;">42</p> <p>1           <b>DEPOSITION OF STAN SMITH, Ph.D.</b></p> <p>2       A.   Well, there would only be one other</p> <p>3       person's initials and that's Stephanie Uhl, U-h-l,</p> <p>4       and it just refers to the fact that she's the senior</p> <p>5       economic analyst at the firm and in charge of all --</p> <p>6       and in charge of the ultimate delivery of this</p> <p>7       report.</p> <p>8       <b>Q.   Let's start with Brian Ebling, do you</b></p> <p>9       <b>know what his educational background is?</b></p> <p>10      A.   Yes. He's a stellar graduate from the</p> <p>11      University of Chicago and has been trained in my</p> <p>12      firm for several years.</p> <p>13      <b>Q.   What degree does he have from the</b></p> <p>14      <b>University of Chicago?</b></p> <p>15      A.   I don't specifically recall. Well, a</p> <p>16      bachelor's degree but I'm not sure whether it was</p> <p>17      science or arts.</p> <p>18      <b>Q.   You don't know whether it was in</b></p> <p>19      <b>economics?</b></p> <p>20      A.   I'm not sure that it was.</p> <p>21      <b>Q.   Okay. Do you believe that it wasn't?</b></p> <p>22      MR. STRUTINSKIY: Objection. Asked and</p> <p>23      answered. He doesn't -- he's not sure.</p> <p>24      MR. LILLIENSTEIN: I asked only if he</p> <p>25      believed that it wasn't.</p>	<p style="text-align: right;">44</p> <p>1           DEPOSITION OF STAN SMITH, Ph.D.</p> <p>2       early years.</p> <p>3       <b>Q.   And by that what do you mean?</b></p> <p>4       A.   Just all administrative stuff.</p> <p>5       <b>Q.   Scheduling, taking --</b></p> <p>6       A.   No, not scheduling.</p> <p>7       <b>Q.   What do you mean by administrative work</b></p> <p>8       <b>then?</b></p> <p>9       A.   Well, he does more intensive economic</p> <p>10      research now because he's been trained. At the</p> <p>11      beginning he was more administrative but still</p> <p>12      administration in the production of reports and</p> <p>13      opinions. That's independent of -- the other</p> <p>14      administration is more generic such as bookkeeping,</p> <p>15      billing, scheduling, reception, that have nothing</p> <p>16      specific to do with a case.</p> <p>17      <b>Q.   And how long did he -- was he doing the</b></p> <p>18      <b>administrative work, as you say?</b></p> <p>19      A.   We eased him into it probably over a</p> <p>20      couple-year period. When somebody arrives day one</p> <p>21      at the firm we first teach them how to correctly</p> <p>22      answer the telephone and where the restroom key is,</p> <p>23      and then over the course of a couple years we</p> <p>24      increase their responsibilities in terms of economic</p> <p>25      human capital.</p>
<p style="text-align: right;">43</p> <p>1           DEPOSITION OF STAN SMITH, Ph.D.</p> <p>2       BY THE WITNESS:</p> <p>3       A.   I'm not sure that it was.</p> <p>4       BY MR. LILLIENSTEIN:</p> <p>5       <b>Q.   Okay. And do you know if he's had any</b></p> <p>6       <b>other -- any economic training other than with your</b></p> <p>7       <b>firm?</b></p> <p>8       A.   He has not. We're a great training</p> <p>9       ground so further training is not needed.</p> <p>10      <b>Q.   How long has he worked for you?</b></p> <p>11      A.   Time flies. It could be in the</p> <p>12      dimension of six years, plus or minus.</p> <p>13      <b>Q.   And what are his duties and</b></p> <p>14      <b>responsibilities?</b></p> <p>15      A.   As it says here, I'll read from the</p> <p>16      staff list page, he assists -- he does economic</p> <p>17      research, he gathers case data, he tracks report</p> <p>18      timetables, he assists me in preparation of reports.</p> <p>19      <b>Q.   You're going to have to fix that typo,</b></p> <p>20      <b>aren't you?</b></p> <p>21      A.   I certainly am.</p> <p>22      <b>Q.   And has he been doing all of those</b></p> <p>23      <b>things for the entire six years?</b></p> <p>24      A.   Brilliantly. He actually did some</p> <p>25      administrative -- more administrative work in the</p>	<p style="text-align: right;">45</p> <p>1           DEPOSITION OF STAN SMITH, Ph.D.</p> <p>2       <b>Q.   So to the best of your knowledge, how</b></p> <p>3       <b>long has he been doing the more economic --</b></p> <p>4       <b>sophisticated economic work as opposed to the</b></p> <p>5       <b>administrative work?</b></p> <p>6       A.   The great majority of his tenure.</p> <p>7       <b>Q.   He's been there six years and you said</b></p> <p>8       <b>that the first couple years he was doing</b></p> <p>9       <b>administrative work; is that fair to say?</b></p> <p>10      A.   Mr. Lillienstein, is this how you choose</p> <p>11      to spend your time today is to figure out Brian's</p> <p>12      two-year transition? I didn't know it was such a</p> <p>13      compelling matter. But if you want further detail</p> <p>14      we can take a break, I'll call Brian, he'll brief me</p> <p>15      on the matter and I can give you additional detail.</p> <p>16      I am astonished at the amount of attention directed</p> <p>17      to such an irrelevant matter.</p> <p>18      <b>Q.   Dr. Smith, I don't appreciate it.</b></p> <p>19      <b>You're wasting time. Please answer the question.</b></p> <p>20      A.   I have a lot of opinions here, and</p> <p>21      whether Brian spent three days answering phones or</p> <p>22      three days learning how to read the Bureau of Labor</p> <p>23      Statistics website, it baffles me that that would be</p> <p>24      so compelling.</p> <p>25      <b>Q.   And if you just answer my question, we</b></p>

<p style="text-align: right;">46</p> <p>1           <b>DEPOSITION OF STAN SMITH, Ph.D.</b></p> <p>2   <b>can move on.</b></p> <p>3       A.   I've offered, in fact, to take a break</p> <p>4   and get further detail. If you find that</p> <p>5   compelling, I'd be happy to do so.</p> <p>6       <b>Q.   No, I decline that offer. Can you just</b></p> <p>7   <b>answer the question?</b></p> <p>8       A.   I did.</p> <p>9       MR. STRUTINSKIY: The witness answered the</p> <p>10   question to the best of his knowledge.</p> <p>11   BY MR. LILLIENSTEIN:</p> <p>12       <b>Q.   So you refuse to answer the question?</b></p> <p>13       MR. STRUTINSKIY: He answered the question.</p> <p>14   BY THE WITNESS:</p> <p>15       A.   Mr. Lillienstein, that's a belligerent</p> <p>16   statement there.</p> <p>17   BY MR. LILLIENSTEIN:</p> <p>18       <b>Q.   I've asked the question and I haven't</b></p> <p>19   <b>gotten an answer. I am assuming you're refusing to</b></p> <p>20   <b>answer it.</b></p> <p>21       A.   Could we get the question read because I</p> <p>22   believe I did answer it, or could you ask it again</p> <p>23   maybe to save time?</p> <p>24       <b>Q.   Was he doing administrative work for</b></p> <p>25   <b>your company for a couple of years?</b></p>	<p style="text-align: right;">48</p> <p>1           DEPOSITION OF STAN SMITH, Ph.D.</p> <p>2   through each report I will identify the sources of</p> <p>3   that, but citations are provided in each report.</p> <p>4       <b>Q.   And was there one interview with each</b></p> <p>5   <b>plaintiff?</b></p> <p>6       A.   Well, there was at least one. I can</p> <p>7   check each of the work notes and see if for some</p> <p>8   reason, not often but sometimes, we call back if</p> <p>9   something was left unclear. Let's just -- if you'd</p> <p>10   like me to check each of the five files I can do so.</p> <p>11       <b>Q.   If you can do that quickly, yes.</b></p> <p>12       A.   Yes, I believe just a single interview</p> <p>13   with each.</p> <p>14       <b>Q.   Do you know how long each of those</b></p> <p>15   <b>interviews lasted?</b></p> <p>16       A.   Do I know? No. If you will next ask me</p> <p>17   can I estimate I can have a general answer, if you</p> <p>18   wish.</p> <p>19       MR. STRUTINSKIY: Don't guess.</p> <p>20   BY MR. LILLIENSTEIN:</p> <p>21       <b>Q.   Can you take a look at the Lim report,</b></p> <p>22   <b>which was, I think it was Exhibit W?</b></p> <p>23       A.   Yes.</p> <p>24       <b>Q.   I'm just using this as an example. The</b></p> <p>25   <b>structure of all these reports is essentially that</b></p>
<p style="text-align: right;">47</p> <p>1           <b>DEPOSITION OF STAN SMITH, Ph.D.</b></p> <p>2       A.   For the great majority of time. I can't</p> <p>3   tell you exactly how many months that was.</p> <p>4       <b>Q.   Okay.</b></p> <p>5       A.   But he was not doing exclusively</p> <p>6   administrative work for any but the initial short</p> <p>7   time period.</p> <p>8       <b>Q.   Okay. And what is Stephanie Uhl's</b></p> <p>9   <b>educational background?</b></p> <p>10       A.   She is also a stellar graduate from the</p> <p>11   University of Chicago and has in addition a masters</p> <p>12   degree from the University of Chicago.</p> <p>13       <b>Q.   And what is her undergraduate degree in?</b></p> <p>14       A.   Economics and mathematics, a dual major.</p> <p>15       <b>Q.   And her masters?</b></p> <p>16       A.   From the University of Chicago Graduate</p> <p>17   School of Business with a concentration in</p> <p>18   economics.</p> <p>19       <b>Q.   Where did all of the factual information</b></p> <p>20   <b>that you relied on in forming your opinions come</b></p> <p>21   <b>from?</b></p> <p>22       A.   Well, the great majority from</p> <p>23   Mr. Chittur -- from the documents that Mr. Chittur</p> <p>24   produced, some from the interviews and some economic</p> <p>25   information we gathered on our own. And as we go</p>	<p style="text-align: right;">49</p> <p>1           <b>DEPOSITION OF STAN SMITH, Ph.D.</b></p> <p>2   <b>the report is given and then there's an appendix and</b></p> <p>3   <b>then there's tables and then there's work notes and</b></p> <p>4   <b>then I believe that there's notes of a telephone</b></p> <p>5   <b>number given; is that correct?</b></p> <p>6       A.   Yes.</p> <p>7       <b>Q.   And if you would turn to the first page</b></p> <p>8   <b>of the note reflecting the telephone interview?</b></p> <p>9       MR. STRUTINSKIY: You're referring to Lim's</p> <p>10   report?</p> <p>11       MR. LILLIENSTEIN: Yes.</p> <p>12   BY THE WITNESS:</p> <p>13       A.   Yes.</p> <p>14   BY MR. LILLIENSTEIN:</p> <p>15       <b>Q.   At the top of that page it says -- seems</b></p> <p>16   <b>to have two sets of initials.</b></p> <p>17       MR. STRUTINSKIY: Is that part of the</p> <p>18   exhibit? Just to clarify, is that the work notes?</p> <p>19   At least I don't have them as part of the exhibit.</p> <p>20   BY THE WITNESS:</p> <p>21       A.   They are not part of the exhibit.</p> <p>22       MR. STRUTINSKIY: Do you have them as part</p> <p>23   of the exhibit, Mr. Smith, as Exhibit W?</p> <p>24       MR. LILLIENSTEIN: My apologies. They were</p> <p>25   marked separately.</p>



<p style="text-align: right;">50</p> <p>1 DEPOSITION OF STAN SMITH, Ph.D.  2 THE VIDEOGRAPHER: Counsel, I have about  3 five minutes left on this tape.  4 BY MR. LILLIENSTEIN:  5 <b>Q. Can you give the witness Exhibit GG.</b>  6 <b>(Whereupon, the document was</b>  7 <b>tendered.)</b>  8 BY MR. LILLIENSTEIN:  9 <b>Q. Do you have Exhibit GG in front of you?</b>  10 A. Yes.  11 <b>Q. Can you take a look at the first page of</b>  12 <b>the telephone interview notes?</b>  13 A. Yes.  14 <b>Q. Are those two different initials at the</b>  15 <b>top?</b>  16 A. Well, the first three letters is Brian  17 Ebling. I'm not sure of his middle name but his  18 initial is A. Then what other initials --  19 <b>Q. "TCW" refers to telephone call with?</b>  20 A. Yes.  21 <b>Q. Now, you said that you reviewed the</b>  22 <b>amended complaint as well?</b>  23 A. Yes.  24 <b>Q. Mr. Chittur did not provide you with the</b>  25 <b>depositions of the plaintiffs, did he?</b></p>	<p style="text-align: right;">52</p> <p>1 <b>DEPOSITION OF STAN SMITH, Ph.D.</b>  2 <b>to be helpful?</b>  3 A. I answered your question to the best of  4 my ability.  5 MR. STRUTINSKIY: You're mischaracterizing  6 the witness' testimony. That's not what he says.  7 BY THE WITNESS:  8 A. It is true you've mischaracterized my  9 answer. I do not assume it was deliberate, but I  10 did answer your question to the best of my ability.  11 BY MR. LILLIENSTEIN:  12 <b>Q. Is a sworn statement something that you</b>  13 <b>feel would be helpful to you forming your opinion?</b>  14 MR. STRUTINSKIY: Objection.  15 BY THE WITNESS:  16 A. I don't conduct my work by feeling.  17 BY MR. LILLIENSTEIN:  18 <b>Q. You believe that a sworn statement would</b>  19 <b>assist you in forming an opinion?</b>  20 MR. STRUTINSKIY: Objection. What case?  21 BY THE WITNESS:  22 A. You would have to give me a statement  23 and I will tell you whether it would assist me.  24 BY MR. LILLIENSTEIN:  25 <b>Q. As a general rule, is a sworn statement</b></p>
<p style="text-align: right;">51</p> <p>1 <b>DEPOSITION OF STAN SMITH, Ph.D.</b>  2 A. I don't believe so.  3 <b>Q. And so you didn't review those</b>  4 <b>deposition transcripts?</b>  5 A. Correct.  6 <b>Q. And did you think it was important to</b>  7 <b>review those transcripts?</b>  8 A. I did not because I asked Mr. Chittur to  9 provide to me all the information he thought I  10 needed in order to -- and relevant to the  11 preparation of my report. And we often find the  12 depositions, since they're conducted by the other  13 side, probably by you in this case, frequently don't  14 delve into matters that we need to know about in  15 order to conduct our analysis. Usually depositions  16 have a lot to do with the circumstances surrounding  17 the liability and very little to do with the  18 analysis of damages.  19 And that victory sign you just  20 flashed means you're ahead two to nothing.  21 <b>Q. What are you talking about?</b>  22 A. Actually, it means there's two minutes  23 left on the tape.  24 <b>Q. Okay. So this statement to the</b>  25 <b>plaintiffs under oath don't -- you don't find those</b></p>	<p style="text-align: right;">53</p> <p>1 <b>DEPOSITION OF STAN SMITH, Ph.D.</b>  2 <b>of a plaintiff something that would help -- would be</b>  3 <b>helpful to you in forming your opinion?</b>  4 A. As a general rule, there is no general  5 rule.  6 THE VIDEOGRAPHER: Counsel, I need to  7 change the tape.  8 This marks the end of Tape No. 1.  9 We're going off the record. The time is 9:58 a.m.  10 (Whereupon, there was an  11 intermission.)  12 THE VIDEOGRAPHER: We're back on the record  13 at the beginning of Tape No. 2. The time is 10:12  14 a.m.  15 BY MR. LILLIENSTEIN:  16 <b>Q. Has Stephanie Uhl ever given expert</b>  17 <b>testimony to your knowledge?</b>  18 A. No.  19 <b>Q. Has she ever been qualified as an expert</b>  20 <b>in any case?</b>  21 A. She's never attempted to be qualified.  22 <b>Q. Were the telephone interviews that were</b>  23 <b>conducted by your staff tape recorded?</b>  24 A. No.  25 <b>Q. Is it your practice not to tape record</b></p>



<p style="text-align: right;">54</p> <p>1           <b>DEPOSITION OF STAN SMITH, Ph.D.</b>  2   <b>those interviews?</b>  3       A.   It's our practice to transcribe the  4   notes that you see and nothing else.  5       <b>Q.   And did you do anything to confirm the</b>  6   <b>accuracy of the notes that I see?</b>  7       A.   Well --  8       MR. STRUTINSKIY: Which notes are you  9   referring to? Are you referring to any particular  10   notes, Mr. Lillienstein?  11       MR. LILLIENSTEIN: I'm referring to all of  12   the work notes.  13   BY THE WITNESS:  14       A.   Yes. Brian is trained, as are all  15   staff, to make sure we understand the information as  16   it's given to us.  17   BY MR. LILLIENSTEIN:  18       <b>Q.   Does he have -- does he use a script --</b>  19       A.   No.  20       <b>Q.   -- in conducting those interviews?</b>  21       <b>No, he does not use a script?</b>  22       A.   That's correct.  23       <b>Q.   And is there any formal written document</b>  24   <b>that you use to instruct your people on how to</b>  25   <b>conduct an interview?</b></p>	<p style="text-align: right;">56</p> <p>1           DEPOSITION OF STAN SMITH, Ph.D.  2   each report, although I seem to be missing one  3   thing. Let's see.  4       <b>Q.   What are you missing?</b>  5       A.   I got Lim and work notes, Serin and work  6   notes, Smith and work notes, Russ and work notes,  7   Redner -- that's it. I got it. All 10.  8       <b>Q.   And those are all the discounted reports</b>  9   <b>of these associated work notes?</b>  10       A.   Sad to say, no.  11       <b>Q.   No?</b>  12       A.   The Lim report, Exhibit X, is the  13   undiscounted report. All the rest are the  14   discounted reports.  15       <b>Q.   So Lim -- you previously had W, the Lim</b>  16   <b>report you've previously had, the discounted</b>  17   <b>reports?</b>  18       A.   So you would like me to swap that one  19   out for the moment?  20       <b>Q.   Yes, please.</b>  21       A.   Sure. All right.  22       <b>Q.   So those are the five discounted reports</b>  23   <b>and the associated work notes for all of the</b>  24   <b>plaintiffs that you've given an opinion on in this</b>  25   <b>case?</b></p>
<p style="text-align: right;">55</p> <p>1           <b>DEPOSITION OF STAN SMITH, Ph.D.</b>  2       A.   No.  3       <b>Q.   So what does the training consist of?</b>  4       A.   Six years or so.  5       <b>Q.   Who does the training?</b>  6       A.   I do it, Stephanie does it, other staff  7   who are also trained do it.  8       <b>Q.   Now, in, I believe, every case in</b>  9   <b>this -- every report -- well, let's go back.</b>  10       Can you take a look at the  11   documents that I believe Jeremy has put before you?  12   It's Exhibit V, X, AA, CC, EE, DD, II, KK, and NN,  13   and PP.  14       THE WITNESS: We keep losing  15   Mr. Lillienstein from the camera view.  16       MR. STRUTINSKIY: He's getting the  17   exhibits. He's right here.  18       THE WITNESS: As long as he's not taking  19   lunch early, we're good.  20   BY MR. LILLIENSTEIN:  21       <b>Q.   All right. So those documents that</b>  22   <b>you've just been handed, can you identify them,</b>  23   <b>please?</b>  24       A.   They are each of the five reports and  25   each of the five sets of work notes associated with</p>	<p style="text-align: right;">57</p> <p>1           <b>DEPOSITION OF STAN SMITH, Ph.D.</b>  2       A.   Yes.  3       <b>Q.   Now, I believe in all cases you've given</b>  4   <b>an opinion as to payments made to Northern Leasing</b>  5   <b>or out-of-pocket expenses; is that true?</b>  6       A.   Well, on Lim, it doesn't appear that we  7   looked at out-of-pocket. That is true of Serin and  8   Russ.  9       <b>Q.   And I think I misspoke. You did not</b>  10   <b>give an opinion on out-of-pocket or payments made to</b>  11   <b>Northern Leasing in the case of Smith?</b>  12       A.   I just told you the ones we did. So the  13   rest I did not.  14       <b>Q.   All right. In Lim, your report talks</b>  15   <b>about loss of payment made to Northern Leasing,</b>  16   <b>right?</b>  17       A.   Yes.  18       <b>Q.   And in Redner, it says "Loss of time</b>  19   <b>spent and payment made to Northern Leasing"?</b>  20       A.   Yes.  21       <b>Q.   In Russ it says, "Loss of time spent and</b>  22   <b>out-of-pocket expenses"?</b>  23       A.   Yes.  24       <b>Q.   Serin is the same as Russ?</b>  25       A.   Right.</p>

<p style="text-align: right;">58</p> <p>1 DEPOSITION OF STAN SMITH, Ph.D.</p> <p>2 <b>Q. And Smith, you do not give an opinion</b></p> <p>3 <b>for out-of-pocket expenses or payments made to</b></p> <p>4 <b>Northern Leasing?</b></p> <p>5 A. Yes.</p> <p>6 <b>Q. Where did you get the information with</b></p> <p>7 <b>regard to the payments made to Northern Leasing and</b></p> <p>8 <b>out-of-pocket expenses?</b></p> <p>9 A. Everything ultimately came from</p> <p>10 Mr. Chittur and the interviews.</p> <p>11 <b>Q. With respect to payments made to</b></p> <p>12 <b>Northern Leasing, did you do anything to corroborate</b></p> <p>13 <b>what you were told by the plaintiffs?</b></p> <p>14 A. Well, we don't act as document fraud</p> <p>15 examiners or private investigators. We accept the</p> <p>16 information that's been provided to us because our</p> <p>17 request is to base our losses on the information</p> <p>18 provided. So the answer is we take what we are</p> <p>19 given.</p> <p>20 If we have some reason to question</p> <p>21 the plausibility of it, we may try and -- or if</p> <p>22 there's some inconsistencies, we may try to seek</p> <p>23 clarification, but that's it.</p> <p>24 <b>Q. So you accept it as true, the events</b></p> <p>25 <b>told to you by the plaintiffs?</b></p>	<p style="text-align: right;">60</p> <p>1 DEPOSITION OF STAN SMITH, Ph.D.</p> <p>2 there are.</p> <p>3 MR. STRUTINSKIY: What are they?</p> <p>4 THE WITNESS: This says 000037. And it</p> <p>5 refers to lease No. 0086224.</p> <p>6 BY MR. LILLIENSTEIN:</p> <p>7 <b>Q. Did Mr. Lim or Mr. Chittur provide you</b></p> <p>8 <b>with copies of any bank statements showing payments</b></p> <p>9 <b>made to Northern Leasing?</b></p> <p>10 A. I don't know. I have quite a few pages</p> <p>11 of information here. Do you want me to paginate</p> <p>12 through each one?</p> <p>13 <b>Q. Just briefly.</b></p> <p>14 A. Well, it can't be done briefly.</p> <p>15 MR. STRUTINSKIY: Mr. Lillienstein, do you</p> <p>16 want him to look at every single -- it can't be done</p> <p>17 briefly. Do you want him to look at every single</p> <p>18 document and answer your question before he answers</p> <p>19 your question?</p> <p>20 BY THE WITNESS:</p> <p>21 A. I will tell you in general, to speed</p> <p>22 things up, I don't recall specifically seeing bank</p> <p>23 statements.</p> <p>24 BY MR. LILLIENSTEIN:</p> <p>25 <b>Q. In any of the cases?</b></p>
<p style="text-align: right;">59</p> <p>1 DEPOSITION OF STAN SMITH, Ph.D.</p> <p>2 A. No.</p> <p>3 <b>Q. You base your opinion on those amounts</b></p> <p>4 <b>though?</b></p> <p>5 A. Yes.</p> <p>6 <b>Q. Did you see any documents that</b></p> <p>7 <b>corroborate any of the plaintiffs' claims that they</b></p> <p>8 <b>made payments to Northern Leasing?</b></p> <p>9 A. I've got a thousand pages of information</p> <p>10 here so I suppose we have to go through every file</p> <p>11 one by one. But let me just start with Lim. So I</p> <p>12 have certain sworn statements regarding payments</p> <p>13 made for Lim, for example.</p> <p>14 <b>Q. "Sworn statement" being what?</b></p> <p>15 A. I guess it's your client was suing Lim.</p> <p>16 Am I right? Mr. Sussman representing Northern</p> <p>17 Leasing?</p> <p>18 <b>Q. What document are you looking at?</b></p> <p>19 A. An attorney affirmation signed by</p> <p>20 Mr. Sussman for the plaintiff Northern Leasing</p> <p>21 asserting certain lease payments.</p> <p>22 <b>Q. Okay. Are there --</b></p> <p>23 MR. STRUTINSKIY: Are there any Bates</p> <p>24 numbers on the documents you're looking at?</p> <p>25 THE WITNESS: Yes, I am -- I'm sorry. Yes,</p>	<p style="text-align: right;">61</p> <p>1 DEPOSITION OF STAN SMITH, Ph.D.</p> <p>2 A. Correct. Now, there may be, but I think</p> <p>3 your colleague here will verify I've got about a</p> <p>4 thousand pages of documents here and --</p> <p>5 <b>Q. We won't ask you to go through that</b></p> <p>6 <b>process.</b></p> <p>7 A. All right.</p> <p>8 <b>Q. Would it be fair to say you took these</b></p> <p>9 <b>statements as to the amount of payments made by the</b></p> <p>10 <b>plaintiffs and repeated that in your report without</b></p> <p>11 <b>investigating whether they were accurate or not?</b></p> <p>12 A. Haven't you asked this question before?</p> <p>13 Or if there's a new twist to it, let me know,</p> <p>14 because I thought I answered it to the best of my</p> <p>15 recollection. If there's something -- if it is</p> <p>16 different from the last time you asked it, help me</p> <p>17 to discern the difference so I can address my answer</p> <p>18 to the distinction.</p> <p>19 <b>Q. I'm summarizing all of the plaintiffs in</b></p> <p>20 <b>this case. I'm trying to save some time.</b></p> <p>21 A. What I answered before about what I did</p> <p>22 for the question you asked about Lim was what I did</p> <p>23 for all of them.</p> <p>24 <b>Q. Okay. Did you do anything other than</b></p> <p>25 <b>tally the amounts of payments that you were told</b></p>

<p style="text-align: right;">62</p> <p>1           <b>DEPOSITION OF STAN SMITH, Ph.D.</b>  2   <b>were made to Northern Leasing and list that as an</b>  3   <b>item of damage or an item of loss in your report?</b>  4       A.   Well, I mean, we calculated what we  5   believe were the payments, yes.  6       <b>Q.   So you took the numbers that you were</b>  7   <b>given, added them up and put them in your report?</b>  8       MR. STRUTINSKIY: Are you talking about the  9   payments? What numbers are you talking to?  10      MR. LILLIENSTEIN: I'm talking about  11   payments to Northern Leasing.  12   BY THE WITNESS:  13      A.   I believe I took the amount of money  14   that was told me. For Ms. Lim (sic), for example, I  15   would have to say no to your question because I  16   believe we only have a record of one payment and so  17   there's nothing to add up. But we would in effect,  18   one way or the other, through simple mathematics,  19   arrive at it. Not always has to be tallied.  20   BY MR. LILLIENSTEIN:  21      <b>Q.   You didn't add any economic analysis to</b>  22   <b>it, it was just a matter of math, correct?</b>  23      A.   Correct.  24      <b>Q.   And would that be the same answer with</b>  25   <b>respect to the out-of-pocket expenses, that you did</b></p>	<p style="text-align: right;">64</p> <p>1           <b>DEPOSITION OF STAN SMITH, Ph.D.</b>  2   <b>they told you and they said they also spent \$75 on a</b>  3   <b>hotel and \$100 on a train ticket, you just took</b>  4   <b>those numbers, added them up and represented that</b>  5   <b>was a loss in your report?</b>  6       MR. STRUTINSKIY: Objection. You're  7   speculating.  8   BY THE WITNESS:  9      A.   What I did was ask for what information  10   would be testified to at trial and I was provided  11   this information. So I took what Mr. Chittur and  12   the plaintiffs represent would be the information  13   they would give in sworn testimony at trial. So  14   that was my assignment, yes.  15   BY MR. LILLIENSTEIN:  16      <b>Q.   So you didn't add anything to do that,</b>  17   <b>you just took what they told you and put it in your</b>  18   <b>report?</b>  19      A.   There's nothing to add if someone's  20   making the claim, say, for a \$100 hotel bill, I have  21   nothing to add to that.  22      <b>Q.   Precisely. Now, with respect to the</b>  23   <b>amount of time spent, that's another item of loss</b>  24   <b>that you've calculated in some of the cases?</b>  25      A.   I'm sorry. One more time.</p>
<p style="text-align: right;">63</p> <p>1           <b>DEPOSITION OF STAN SMITH, Ph.D.</b>  2   <b>nothing to analyze them, you simply took the numbers</b>  3   <b>you were given and added them up and put them in</b>  4   <b>your report?</b>  5       A.   We reviewed them to make sure they  6   appeared to be the information we asked for about  7   out-of-pocket. If somebody submitted a list of  8   out-of-pocket expenses that included a honeymoon to  9   Hawaii, we would probably wonder whether some papers  10   were mis-shuffled or mis-Xeroxed. So we look at the  11   information to make sure it appears to be reasonably  12   responsive to the information we asked for.  13      <b>Q.   But if you didn't see a document and</b>  14   <b>they just told you a number, would it be fair to say</b>  15   <b>you just took that number, added it up and put it in</b>  16   <b>your report?</b>  17      A.   As long as the number appeared to be  18   within the dimension of the types of the numbers we  19   would expect to hear, somebody said their  20   out-of-pocket was 10 million -- I'm just saying that  21   as an absurd exaggeration -- we would ask about  22   whether the question was properly understood. But  23   if somebody said, I spent \$20 on a cab ride, that  24   certainly wouldn't cause us to raise our eyebrows.  25      <b>Q.   And I'm just saying that if that's what</b></p>	<p style="text-align: right;">65</p> <p>1           <b>DEPOSITION OF STAN SMITH, Ph.D.</b>  2      <b>Q.   There is an item of loss reported in</b>  3   <b>your reports which is called "loss of time spent" in</b>  4   <b>certain cases; is that true?</b>  5      A.   Correct.  6      <b>Q.   And where did you get the information as</b>  7   <b>to the amount of time spent by the plaintiffs?</b>  8      A.   The information comes also as a result  9   of my inquiry, which is essentially how much time  10   will you be testifying to as having been spent in  11   connection with seeking the remedy, the credit  12   damage situation.  13      <b>Q.   First of all, you didn't ask, your staff</b>  14   <b>member asked, right?</b>  15      A.   I asked the question to be asked by my  16   staff member, yes.  17      <b>Q.   And you're essentially asking for the</b>  18   <b>plaintiffs to estimate the amount of time they spent</b>  19   <b>dealing with the problem?</b>  20      A.   Yes. Well, no. I'm asking for the  21   plaintiffs to tell me what answer they will give in  22   sworn testimony at court when asked how much time  23   have you spent in seeking to address and remedy and  24   resolve the problem.  25      <b>Q.   Now, none of the work notes or interview</b></p>

<p style="text-align: right;">66</p> <p>1           <b>DEPOSITION OF STAN SMITH, Ph.D.</b></p> <p>2   <b>notes indicates that that question was asked, do</b></p> <p>3   <b>they?</b></p> <p>4       A.   We don't record the questions in the</p> <p>5   interview. We record the statements made by the</p> <p>6   interviewees.</p> <p>7       <b>Q.   Okay. Now, with respect to Mr. Lim, he</b></p> <p>8   <b>estimated between 200 and 250 hours; is that</b></p> <p>9   <b>correct?</b></p> <p>10      A.   Yes.</p> <p>11      <b>Q.   But your report uses 240 hours; is that</b></p> <p>12   <b>correct?</b></p> <p>13      A.   Yes.</p> <p>14      <b>Q.   And in the case of Serin, she estimated</b></p> <p>15   <b>between 100 and 200 hours; is that correct?</b></p> <p>16      A.   You seem to keep going through these in</p> <p>17   a different order, but just give me a moment.</p> <p>18            Yes.</p> <p>19      <b>Q.   And your report uses 150 hours; is that</b></p> <p>20   <b>correct?</b></p> <p>21      A.   Yes.</p> <p>22      <b>Q.   What was the basis for you to decide to</b></p> <p>23   <b>use 150 hours?</b></p> <p>24      A.   It was within the range of what the</p> <p>25   claimants told us.</p>	<p style="text-align: right;">68</p> <p>1           <b>DEPOSITION OF STAN SMITH, Ph.D.</b></p> <p>2       A.   Pardon me?</p> <p>3       <b>Q.   Do you know that or you're just assuming</b></p> <p>4   <b>that?</b></p> <p>5       A.   That's what he told us.</p> <p>6       <b>Q.   Okay.</b></p> <p>7       A.   And --</p> <p>8       <b>Q.   You assumed --</b></p> <p>9       A.   Let me -- wait, wait. It will go faster</p> <p>10   if I finish my answer.</p> <p>11            So we portray to the jury a model</p> <p>12   of time loss based on 40 hours a year. That does</p> <p>13   result in a number within the range of what Mr. Lim</p> <p>14   testified to.</p> <p>15            But the reason we choose a round</p> <p>16   number is to make things simple for a jury. If they</p> <p>17   think it was 35 hours a year, they could take off</p> <p>18   one-eighth; if they think it's 45 hours a year, they</p> <p>19   could add one-eighth; if they think it's 36 hours a</p> <p>20   year, they could take off one-tenth.</p> <p>21            So rather than give them some</p> <p>22   number like, you know, 38.32 hours, which you would</p> <p>23   get if you exactly divided the 225 hours by six</p> <p>24   years, you would get some weird number, some odd</p> <p>25   number, I try to make it easy for a jury to</p>
<p style="text-align: right;">67</p> <p>1           DEPOSITION OF STAN SMITH, Ph.D.</p> <p>2       <b>Q.   And the same answer for Mr. Lim?</b></p> <p>3       A.   Yes.</p> <p>4       <b>Q.   So why did you choose a number closer to</b></p> <p>5   <b>the high end of the range in the case of Mr. Lim and</b></p> <p>6   <b>a number right in the middle in the case of</b></p> <p>7   <b>Ms. Serin?</b></p> <p>8       A.   Well, that's just one way of looking at</p> <p>9   it. I chose a number that was neither at the top</p> <p>10   nor the bottom is the way I look at it.</p> <p>11      <b>Q.   Okay. Does the --</b></p> <p>12      A.   I'll tell you a little more practically</p> <p>13   that we chose a number that was -- what I would call</p> <p>14   a round annual figure that would fall within the</p> <p>15   range when you add up all the years so that, for</p> <p>16   example, if -- let me take the last one you</p> <p>17   mentioned, Ms. Serin.</p> <p>18            So she testified -- let me take the</p> <p>19   first one because that's the one I think gave you a</p> <p>20   little more -- probably causes you to have a little</p> <p>21   more question.</p> <p>22            So Mr. Lim said 100 to 150 hours.</p> <p>23   We know that he spent this time over a five-year</p> <p>24   period -- I'm sorry. 6-year period, 2001 to 2006.</p> <p>25      <b>Q.   Do you know that?</b></p>	<p style="text-align: right;">69</p> <p>1           DEPOSITION OF STAN SMITH, Ph.D.</p> <p>2   comprehend the nature of the testimony, the</p> <p>3   methodology, the manner of application and the</p> <p>4   process for simple adjustment so long as my numbers</p> <p>5   do faithfully represent the interview testimony of</p> <p>6   the plaintiff.</p> <p>7       <b>Q.   Couldn't you have just taken the low</b></p> <p>8   <b>end, figure it out that way, and then taken the high</b></p> <p>9   <b>end and figure it out that way and let the jury</b></p> <p>10   <b>decide?</b></p> <p>11      A.   Mr. Lillienstein, there's a billion</p> <p>12   things I could have done. I appreciate your</p> <p>13   suggestion. I did it the best way I see fit. I'm</p> <p>14   sure your economist can follow your directions and</p> <p>15   appreciate your advice.</p> <p>16      <b>Q.   The result of what you did is relatively</b></p> <p>17   <b>arbitrary, isn't it?</b></p> <p>18      A.   The result of what I did was to</p> <p>19   absolutely faithfully represent and reflect the</p> <p>20   value claimed by the claimants as stated in the</p> <p>21   interview testimony.</p> <p>22      <b>Q.   But he never told you that he spent 240</b></p> <p>23   <b>hours?</b></p> <p>24      A.   He absolutely did.</p> <p>25      <b>Q.   Okay.</b></p>

<p style="text-align: right;">70</p> <p>1           <b>DEPOSITION OF STAN SMITH, Ph.D.</b></p> <p>2           A.   240 is absolutely in the range of 200 to</p> <p>3           250.</p> <p>4           <b>Q.   Does the fact that Ms. Serin told you</b></p> <p>5           <b>that the amount of time spent was between 100 and</b></p> <p>6           <b>200 hours perhaps suggest to you that she was</b></p> <p>7           <b>guessing?</b></p> <p>8           MR. STRUTINSKIY: Objection.</p> <p>9           BY THE WITNESS:</p> <p>10          A.   I don't have a Ph.D. in psychology and</p> <p>11          I'm not here to speculate.</p> <p>12          BY MR. LILLIENSTEIN:</p> <p>13          <b>Q.   You did say if you got some information</b></p> <p>14          <b>that you thought was wildly out of the realm of</b></p> <p>15          <b>possibilities that you would question it, correct?</b></p> <p>16          A.   Yes. But for somebody to tell me that</p> <p>17          they spent maybe 45 minutes a week on average on a</p> <p>18          matter of deep concern to them does not sound to me</p> <p>19          particularly unusual. I've conducted dozens of such</p> <p>20          interviews with similarly situated plaintiffs who</p> <p>21          sustained credit damage over the course of years,</p> <p>22          and the figures reported in this case are certainly</p> <p>23          not unusual on an annual basis. In fact, they seem</p> <p>24          to me actually quite low.</p> <p>25          <b>Q.   My question is whether the range of the</b></p>	<p style="text-align: right;">72</p> <p>1           DEPOSITION OF STAN SMITH, Ph.D.</p> <p>2           <b>Q.   Okay. That was my next question. So</b></p> <p>3           <b>you did not see any documentary evidence supporting</b></p> <p>4           <b>the numbers that each of the plaintiffs gave to you?</b></p> <p>5           A.   I am not sure there's any documentation</p> <p>6           that exists.</p> <p>7           <b>Q.   But you didn't see any whether it exists</b></p> <p>8           <b>or not?</b></p> <p>9           A.   I was not provided any, correct.</p> <p>10          <b>Q.   Are you aware of any economic literature</b></p> <p>11          <b>which supports a procedure for estimating the amount</b></p> <p>12          <b>of time spent by someone by simply asking a person</b></p> <p>13          <b>to give an estimate?</b></p> <p>14          A.   You know, Mr. Lillienstein, when someone</p> <p>15          goes to a doctor complaining of pain and the doctor</p> <p>16          pokes a finger into their ribs and says, on a scale</p> <p>17          of one to 10, how do you feel? And if they say 2,</p> <p>18          they're sent home with an aspirin maybe and told to</p> <p>19          take it easy for a day or two. And if they say 10,</p> <p>20          they may be rushed into a room where neurosurgery,</p> <p>21          brain surgery is performed.</p> <p>22                  I've never seen a doctor or heard</p> <p>23          of a doctor ask a patient what peer-reviewed</p> <p>24          literature have they read, what academic training do</p> <p>25          they have in being able to answer the question on a</p>
<p style="text-align: right;">71</p> <p>1           <b>DEPOSITION OF STAN SMITH, Ph.D.</b></p> <p>2           <b>hours that she gave you seems like she was guessing?</b></p> <p>3           MR. STRUTINSKIY: Objection. He answered.</p> <p>4           BY THE WITNESS:</p> <p>5           A.   I know that's your question and I did</p> <p>6           answer it.</p> <p>7           BY MR. LILLIENSTEIN:</p> <p>8           <b>Q.   So that's your answer to my question as</b></p> <p>9           <b>to whether the range of 100 to 200 hours suggests</b></p> <p>10          <b>that she was guessing?</b></p> <p>11          MR. STRUTINSKIY: Objection again. Asked</p> <p>12          and answered.</p> <p>13          BY THE WITNESS:</p> <p>14          A.   Yes, that's my answer.</p> <p>15          BY MR. LILLIENSTEIN:</p> <p>16          <b>Q.   Did your assistants ask each plaintiff</b></p> <p>17          <b>if they kept any records of the time they spent?</b></p> <p>18          A.   They would -- they are trained to ask</p> <p>19          for any records if they are kept. Typically</p> <p>20          records, time records or diaries are not kept.</p> <p>21          <b>Q.   Do you know whether that question was</b></p> <p>22          <b>asked in this case of any of the plaintiffs?</b></p> <p>23          A.   We asked for all documentation to</p> <p>24          support the statements made, if available. So since</p> <p>25          we received none, I assume that none was available.</p>	<p style="text-align: right;">73</p> <p>1           DEPOSITION OF STAN SMITH, Ph.D.</p> <p>2           scale of one to 10, how do you feel?</p> <p>3           Economists are trained to gather</p> <p>4           information, and when we ask someone how much time</p> <p>5           have you spent, we don't ask them to first go get a</p> <p>6           degree in statistics, either an undergraduate degree</p> <p>7           or advanced degree, we don't send them a textbook in</p> <p>8           statistics, we don't give them a course in</p> <p>9           statistics.</p> <p>10          My assignment, I'll repeat again,</p> <p>11          from Mr. Chittur was to gather the information that</p> <p>12          I understand will be the subject of sworn testimony</p> <p>13          at trial and to portray to the jury the dollar</p> <p>14          figures that represent the economic losses based on</p> <p>15          the fact testimony that I am told will be given.</p> <p>16          <b>Q.   Are you done?</b></p> <p>17          A.   Yes.</p> <p>18          <b>Q.   I move to strike that as nonresponsive.</b></p> <p>19          <b>Are you aware of any economic</b></p> <p>20          <b>literature that supports the methodology that you</b></p> <p>21          <b>use to determine the amount of time spent?</b></p> <p>22          A.   There is no economic literature that</p> <p>23          guides an economist on asking a simple question such</p> <p>24          as what is your name, what is your race, what is</p> <p>25          your gender, what is your date of birth, how many</p>



<p style="text-align: right;">74</p> <p>1 DEPOSITION OF STAN SMITH, Ph.D.  2 hours did you spend last week in your opinion on the  3 phone, driving, sleeping.  4 And so those are all standard  5 processes that economists engage in, especially in  6 forensic economics, asking questions of plaintiffs  7 that are simple to understand and simple to answer  8 and ask the plaintiff to recall from memory how much  9 time did you spend cooking, approximately, or how  10 many hours did you spend studying or how many hours  11 did you spend addressing this particular situation?  12 I was vice president for a number  13 of years of a -- roughly a thousand-person  14 organization, the leading organization in the field  15 of national -- the National Association of Forensic  16 Economics and none of my colleagues or even  17 economists outside the field has ever seen fit to  18 write a peer-reviewed journal article or to attempt  19 to write a peer-reviewed journal article on how  20 economists can ask a question that consists of how  21 much time did you spend in this activity. So that's  22 the best answer I can give you.  23 <b>Q. So the answer is there is no such</b>  24 <b>economic literature and it's your testimony that</b>  25 <b>there's no need for economic literature?</b></p>	<p style="text-align: right;">76</p> <p>1 DEPOSITION OF STAN SMITH, Ph.D.  2 upset, they spent these many hours. I believe  3 that's their Constitutional right.  4 I believe they have a further  5 Constitutional right to have an expert come in and  6 say if a plaintiff spent 10 hours doing something,  7 the market cost of those hours is X. And that has  8 nothing to do with science, it has nothing to do  9 with Daubert, it has nothing to do with getting a  10 Ph.D. in economics.  11 All it has to do is having a  12 plaintiff say, my memory tells me this to the jury  13 and have an economist say, if you want to assume a  14 reasonable replacement cost of \$20 an hour, then  15 this is how you simply multiply that out.  16 It is not the kind of thing that  17 would be subject to Daubert, because it's not  18 economic science. It's simply economic  19 multiplication, looking up a figure from the Bureau  20 of Labor Statistics or the Bureau of Commerce as to  21 an appropriate hourly rate and multiplying it by the  22 number that the plaintiff has testified to.  23 So it's not something that could  24 ever be the subject of a Daubert motion, it's simply  25 outside the scope of a Daubert motion.</p>
<p style="text-align: right;">75</p> <p>1 DEPOSITION OF STAN SMITH, Ph.D.  2 MR. STRUTINSKIY: You're mischaracterizing  3 his testimony. If you have any economic literature  4 you would like to present him to review, then do  5 that.  6 MR. LILLIENSTEIN: You don't get to make  7 speaking objections in federal court. Okay?  8 BY MR. LILLIENSTEIN:  9 <b>Q. There is no such economic literature, is</b>  10 <b>that basically your testimony?</b>  11 A. I can't imagine that there is any such  12 literature. I never heard of it and nobody that I  13 know of, to my knowledge, has ever heard of it.  14 <b>Q. Okay. Is there any way for anybody to</b>  15 <b>test whether the estimates given by the plaintiffs</b>  16 <b>are accurate?</b>  17 A. You misunderstand. This is the  18 testimony that they told me they would give, and my  19 assignment is to base the loss on this testimony.  20 This has nothing to do with accuracy. That has to  21 do with the plaintiff saying, here's what I will  22 testify to.  23 I believe these plaintiffs have the  24 Constitutional right to come into court and tell the  25 jury they felt cold, they felt warm, they felt</p>	<p style="text-align: right;">77</p> <p>1 DEPOSITION OF STAN SMITH, Ph.D.  2 <b>Q. I appreciate your desire to filibuster</b>  3 <b>here but I'm going to ask a question and hopefully</b>  4 <b>get a straight answer this time.</b>  5 A. Mr. Lillienstein, I do not appreciate --  6 I'm not going to go on until you tell me you will  7 cease your sarcasm. I am not going to continue with  8 sarcasm at the level you have raised it to. If you  9 would like to have a side conversation with Mr. --  10 with Andrey or call a judge, but I will tell you  11 this, you do not have the right to cast sarcastic  12 remarks in my direction. My belief is that a judge  13 would ask you to be respectful in this process. My  14 understanding is these processes are to be conducted  15 as if they were in a court of law and I believe a  16 judge would require a minimum of decorum and  17 respect. I will accord that to you and absolutely  18 request that you do the same.  19 <b>Q. I will do that.</b>  20 <b>Is there any way for anyone to test</b>  21 <b>the -- whether the methodology of asking a question</b>  22 <b>of a plaintiff is accurate?</b>  23 A. This is outside the realm of testing.  24 There is not a yes or no to that question. This is  25 the testimony of the plaintiff. You may inquire in</p>



<p style="text-align: right;">78</p> <p>1 DEPOSITION OF STAN SMITH, Ph.D.</p> <p>2 court as to whether the plaintiff -- how the</p> <p>3 plaintiff knows what he's testifying to, but it's</p> <p>4 not my testimony about the hours spent. It is my</p> <p>5 testimony about the value per hour and that is a</p> <p>6 well -- based on a well-established credible set of</p> <p>7 statistics, all universally accepted by economists</p> <p>8 nationwide as to an appropriate hourly rate.</p> <p>9 <b>Q. And to come up with your opinion as to</b></p> <p>10 <b>the amount of the loss which you did, I believe you</b></p> <p>11 <b>just testified was take the figures that you got</b></p> <p>12 <b>from the plaintiff and multiplied it by that rate?</b></p> <p>13 A. Correct.</p> <p>14 <b>Q. And in forming your opinion as to the</b></p> <p>15 <b>amount of time spent, I take it that you don't</b></p> <p>16 <b>believe that it makes any difference whether the</b></p> <p>17 <b>time they actually lost was income-producing time or</b></p> <p>18 <b>not-income-producing time?</b></p> <p>19 A. I did not form an opinion as to the</p> <p>20 amount of time spent.</p> <p>21 <b>Q. With respect to the value of the time</b></p> <p>22 <b>lost, is it fair to say that you don't believe that</b></p> <p>23 <b>it's important to consider whether the time lost was</b></p> <p>24 <b>spent doing income-producing activities or</b></p> <p>25 <b>non-income-producing activities?</b></p>	<p style="text-align: right;">80</p> <p>1 DEPOSITION OF STAN SMITH, Ph.D.</p> <p>2 of the pronoun "it."</p> <p>3 <b>Q. I'm going to ask you a different</b></p> <p>4 <b>question.</b></p> <p>5 <b>In forming your opinions as to the</b></p> <p>6 <b>value of time lost, does it matter to you whether</b></p> <p>7 <b>the lost time was leisure time or time spent</b></p> <p>8 <b>generating income in forming your opinion? Not what</b></p> <p>9 <b>other economists say.</b></p> <p>10 A. Under the methodology that I have used,</p> <p>11 it does not.</p> <p>12 <b>Q. In your opinion, the value of an hour of</b></p> <p>13 <b>each plaintiff's time --</b></p> <p>14 MR. LILLIENSTEIN: I believe Mr. Altman</p> <p>15 might have just joined the conference.</p> <p>16 MR. ALTMAN: This is in fact Mr. Altman.</p> <p>17 THE WITNESS: Mr. Altman, you are welcome</p> <p>18 to this proceeding.</p> <p>19 MR. ALTMAN: As per agreement of counsel, I</p> <p>20 will be taking over the defense of this witness at</p> <p>21 this time.</p> <p>22 MR. LILLIENSTEIN: I didn't realize we had</p> <p>23 such an agreement, but that's fine.</p> <p>24 BY THE WITNESS: Mr. Altman, did you wish</p> <p>25 to take a couple-minute break at this time?</p>
<p style="text-align: right;">79</p> <p>1 <b>DEPOSITION OF STAN SMITH, Ph.D.</b></p> <p>2 A. I'll answer your question this way: The</p> <p>3 standard mechanism in forensic economics regarding</p> <p>4 valuing time such as this is to look at the market</p> <p>5 replacement cost, a method universally adopted -- I</p> <p>6 shouldn't say all, but universally adopted in the</p> <p>7 field of forensic economics and absolutely codified</p> <p>8 and approved of by the U.S. Supreme Court. And,</p> <p>9 therefore, the actual hourly rate or opportunity</p> <p>10 cost has not been the subject of a Supreme Court</p> <p>11 opinion, U.S. Supreme Court opinion, to my</p> <p>12 knowledge, and is generally not used by economists</p> <p>13 because if we had a neurosurgeon spending one hour</p> <p>14 or a cab driver spending one hour, the claims would</p> <p>15 be vastly different.</p> <p>16 And that, I think, would be</p> <p>17 somewhat unfair against the defendant if there were</p> <p>18 two cases where one neurosurgeon was claiming loss</p> <p>19 of the hour and another case where a taxicab driver</p> <p>20 were claiming loss of the hour, there could be a</p> <p>21 difference in the claim in one case of maybe \$25 and</p> <p>22 the other case maybe \$2500.</p> <p>23 <b>Q. And that to you -- it doesn't affect</b></p> <p>24 <b>your opinion as to the value of the lost time?</b></p> <p>25 A. I need for you to specify the antecedent</p>	<p style="text-align: right;">81</p> <p>1 DEPOSITION OF STAN SMITH, Ph.D.</p> <p>2 MR. ALTMAN: That would be good. With the</p> <p>3 agreement of counsel here, would this be a</p> <p>4 convenient breaking point just so I could get the</p> <p>5 lay of the land?</p> <p>6 THE WITNESS: How many minutes are we into</p> <p>7 the second tape?</p> <p>8 THE VIDEOGRAPHER: We have 23 minutes left</p> <p>9 on this tape.</p> <p>10 MR. LILLIENSTEIN: Why don't we go to the</p> <p>11 end of this tape and you can talk.</p> <p>12 THE WITNESS: So we've got about 20 plus</p> <p>13 minutes left.</p> <p>14 MR. ALTMAN: Okay. Then I will consider</p> <p>15 until then.</p> <p>16 THE WITNESS: So far, Keith, it's been</p> <p>17 expeditious and cordial.</p> <p>18 BY MR. LILLIENSTEIN:</p> <p>19 <b>Q. Your opinions calculate the value of an</b></p> <p>20 <b>hour of each plaintiff's time using the median wages</b></p> <p>21 <b>of office clerks and payroll and timekeeping clerks</b></p> <p>22 <b>for various locations; is that correct?</b></p> <p>23 A. Correct.</p> <p>24 <b>Q. And what factors led you to select these</b></p> <p>25 <b>figures?</b></p>

<p style="text-align: right;">82</p> <p>1           <b>DEPOSITION OF STAN SMITH, Ph.D.</b></p> <p>2           A.    These are the folks that -- for example,</p> <p>3           if Ms. Lim (sic) were to have had someone undertake</p> <p>4           the activities that she undertook on her behalf, I</p> <p>5           believe these are the rates that she would have paid</p> <p>6           so that she herself would not have spent the time.</p> <p>7           I do not include any time she would have had in</p> <p>8           regard to supervision of these matters.</p> <p>9           MR. STRUTINSKIY: Just to clarify, are you</p> <p>10          referring to Ms. Lim or Ms. Serin? You're referring</p> <p>11          to she and referring to Mr. Lim.</p> <p>12          BY THE WITNESS:</p> <p>13          A.    I'm sorry. Mr. Lim. I think -- was</p> <p>14          your question to Mr. Lim?</p> <p>15          BY MR. LILLIENSTEIN:</p> <p>16          <b>Q.   No, it wasn't.</b></p> <p>17          A.    Was of it Ms. Serin?</p> <p>18          <b>Q.   It wasn't of either.</b></p> <p>19          A.    For any of the plaintiffs my answer is</p> <p>20          generic to any of the plaintiffs, what each of</p> <p>21          them -- what it may have cost each of them, a</p> <p>22          reasonable and a conservative estimate what it would</p> <p>23          have cost each of them had they had these services</p> <p>24          performed on their own behalf rather than conduct</p> <p>25          them themselves, absent any supervision and other</p>	<p style="text-align: right;">84</p> <p>1           DEPOSITION OF STAN SMITH, Ph.D.</p> <p>2           BY THE WITNESS:</p> <p>3           A.    I sought a wage rate appropriate to the</p> <p>4           activity that was engaged in, and I believe my</p> <p>5           approach is very conservative. So actually neither</p> <p>6           is the first answer to your question.</p> <p>7           BY MR. LILLIENSTEIN:</p> <p>8           <b>Q.   Do you know what occupation Mr. Smith</b></p> <p>9           <b>had?</b></p> <p>10          A.    Mr. Smith indicated he was president of</p> <p>11          a company that supplies wholesale supplies to</p> <p>12          restaurants and bars. It appears to be a small</p> <p>13          company, so he's an entrepreneur in a generic sense.</p> <p>14          <b>Q.   Do you know what occupation Ms. Serin</b></p> <p>15          <b>had?</b></p> <p>16          A.    I will firstly say their occupation was</p> <p>17          irrelevant to me but we often do learn --</p> <p>18          <b>Q.   Then we can stop. Why do you believe it</b></p> <p>19          <b>was irrelevant?</b></p> <p>20          A.    Well, I'm happy to tell you what I did</p> <p>21          and what I based my losses on and then I can tell</p> <p>22          you that there are 4 billion other things that are</p> <p>23          irrelevant and that's just one of the 4 billion</p> <p>24          things that are irrelevant, are their occupation.</p> <p>25          <b>Q.   So I'm confused. Earlier I believe you</b></p>
<p style="text-align: right;">83</p> <p>1           DEPOSITION OF STAN SMITH, Ph.D.</p> <p>2           costs associated with the retention and provision of</p> <p>3           such services.</p> <p>4           <b>Q.   Did you make an attempt to find a wage</b></p> <p>5           <b>rate that was equivalent to the type of occupation</b></p> <p>6           <b>that each of the plaintiffs had?</b></p> <p>7           A.    Yes. They performed work in general</p> <p>8           regarding matters that had to do with modest</p> <p>9           accounting and administration such as that performed</p> <p>10          by an office clerk or a payroll clerk. This rate of</p> <p>11          \$14 an hour is, I think you will agree, it's very</p> <p>12          hard to find anybody to work at \$14 an hour doing</p> <p>13          any kind of administration or payroll clerk on a</p> <p>14          freelance basis.</p> <p>15          <b>Q.   Is it your testimony that you purposely</b></p> <p>16          <b>chose a low wage rate to be conservative or you</b></p> <p>17          <b>tried to match the wage rate applicable to each of</b></p> <p>18          <b>these plaintiffs?</b></p> <p>19          A.    Well, it wasn't a wage --</p> <p>20          MR. ALTMAN: Objection. Misstates the</p> <p>21          testimony.</p> <p>22          MR. LILLIENSTEIN: Can you read back the</p> <p>23          question, please.</p> <p>24                  (Whereupon, the record was</p> <p>25                  read as requested.)</p>	<p style="text-align: right;">85</p> <p>1           <b>DEPOSITION OF STAN SMITH, Ph.D.</b></p> <p>2           <b>testified that you tried to match the wage rate to</b></p> <p>3           <b>their occupation?</b></p> <p>4           A.    No. You testified to that. I did not.</p> <p>5           I corrected you and said no. I selected, and</p> <p>6           apologize if there's been any misunderstanding based</p> <p>7           on what I said. But I selected a wage rate that I</p> <p>8           believe was appropriate to the activity that they</p> <p>9           undertook in seeking to remedy the credit damage</p> <p>10          situation.</p> <p>11          But whether -- but that would be</p> <p>12          the same whether it was a neurosurgeon that had the</p> <p>13          credit damage or a taxi driver who had the credit</p> <p>14          damage, they would all, in my experience, be</p> <p>15          undertaking a similar remedy which is to collect the</p> <p>16          financial information, collect information about</p> <p>17          dates, discuss matters with attorneys, make phone</p> <p>18          calls, all matters of -- that can be undertaken by a</p> <p>19          relatively modestly trained administrative clerk,</p> <p>20          payroll clerk, that sort of thing.</p> <p>21          So the wage rate I selected, which</p> <p>22          is really the only -- the principal economic</p> <p>23          determination here is a rate I believed appropriate</p> <p>24          to the activity they engaged in which was unrelated</p> <p>25          to their occupation. In fact, we could have had</p>

<p style="text-align: right;">86</p> <p>1 DEPOSITION OF STAN SMITH, Ph.D.</p> <p>2 someone who was retired or somebody who works for a</p> <p>3 charity at \$1 a year and this would still be the</p> <p>4 same.</p> <p>5 <b>Q. And what was the activity that they</b></p> <p>6 <b>engaged in?</b></p> <p>7 A. I just gave it to you in my answer.</p> <p>8 <b>Q. Give it to me again.</b></p> <p>9 A. Could I have my answer read back so I</p> <p>10 can faithfully repeat the words?</p> <p>11 (Whereupon, the record was</p> <p>12 read as requested.)</p> <p>13 BY THE WITNESS:</p> <p>14 A. So I really have nothing further to add</p> <p>15 to those activities. I believe each of the</p> <p>16 plaintiffs will be in a position to testify on their</p> <p>17 own behalf as to more detail about what specific</p> <p>18 activities they undertook or what specific time was</p> <p>19 lost as a result of the lawsuits that Northern filed</p> <p>20 as a result of the credit damage, as a result of all</p> <p>21 the things that are in the complaint.</p> <p>22 BY MR. LILLIENSTEIN:</p> <p>23 <b>Q. Your opinion, then, attempts to</b></p> <p>24 <b>attribute a value to the time spent by the</b></p> <p>25 <b>plaintiffs seeking to undo the credit damage; is</b></p>	<p style="text-align: right;">88</p> <p>1 DEPOSITION OF STAN SMITH, Ph.D.</p> <p>2 occupations. I have not memorized how the survey</p> <p>3 process is conducted, but it would be difficult for</p> <p>4 me to imagine that there's an economist in the</p> <p>5 country who would testify that the median rate --</p> <p>6 that they have arrived at for that level of</p> <p>7 occupation is not the best indicator available. I</p> <p>8 know of nobody who publishes alternative or</p> <p>9 substitute or competitive data. I've never seen a</p> <p>10 single peer-reviewed journal article criticizing the</p> <p>11 methodology. I've never seen any peer-reviewed</p> <p>12 statement that the -- that those rates are not</p> <p>13 reliable and that's it.</p> <p>14 <b>Q. And how did you arrive at the estimate</b></p> <p>15 <b>of loss that you put in your report?</b></p> <p>16 A. Well, the very simple process --</p> <p>17 MR. ALTMAN: Objection. Form.</p> <p>18 BY MR. LILLIENSTEIN:</p> <p>19 <b>Q. You can answer.</b></p> <p>20 A. We're talking about time, right?</p> <p>21 <b>Q. Right.</b></p> <p>22 A. Okay. I took the testimony that the</p> <p>23 plaintiffs gave during the interviews, put an annual</p> <p>24 value to it, multiplied that by the appropriate rate</p> <p>25 that we have just been speaking of, added -- where</p>
<p style="text-align: right;">87</p> <p>1 DEPOSITION OF STAN SMITH, Ph.D.</p> <p>2 <b>that fair to say?</b></p> <p>3 A. Again, mischaracterizes. My answer was</p> <p>4 much more full than that.</p> <p>5 Your client sued these plaintiffs,</p> <p>6 am I correct?</p> <p>7 <b>Q. Yes.</b></p> <p>8 A. Well, that's --</p> <p>9 <b>Q. Not in all cases, no. That's not</b></p> <p>10 <b>correct.</b></p> <p>11 A. So it's not just credit damage. There</p> <p>12 are lawsuits that were responded to, there was, as I</p> <p>13 say, all these matters on the complaint. I don't</p> <p>14 want to oversimplify it. But the many issues that</p> <p>15 these plaintiffs needed to deal with as a result of</p> <p>16 all the allegations in the complaint, I have put a</p> <p>17 conservative dollar value on the time spent that the</p> <p>18 plaintiffs -- on the time that the plaintiffs</p> <p>19 expended in seeking to extract themselves from the</p> <p>20 circumstances and remedy the circumstances and</p> <p>21 resolve the circumstances.</p> <p>22 <b>Q. Do you know how the Georgia Department</b></p> <p>23 <b>of Labor compiles wage rates that you used in your</b></p> <p>24 <b>report?</b></p> <p>25 A. These are typically surveys of various</p>	<p style="text-align: right;">89</p> <p>1 DEPOSITION OF STAN SMITH, Ph.D.</p> <p>2 necessary added an inflation factor to that because</p> <p>3 the rate is -- the figures we got were 2009 figures</p> <p>4 so I deflated them backwards in time. So, for</p> <p>5 example, if something was worth, say, \$10 an hour in</p> <p>6 2009, I valued it a couple percent less due to wage</p> <p>7 inflation in 2008 and so on.</p> <p>8 <b>Q. I would like you to focus now on the</b></p> <p>9 <b>report on Russ and the associated work notes.</b></p> <p>10 A. All right.</p> <p>11 <b>Q. Now, that report includes an item of</b></p> <p>12 <b>loss that you referred to as loss of business</b></p> <p>13 <b>profits?</b></p> <p>14 A. Yes.</p> <p>15 <b>Q. In your opinion, did you assume that</b></p> <p>16 <b>Mr. Russ lost the opportunity to purchase three</b></p> <p>17 <b>check cashing locations from a competitor who was</b></p> <p>18 <b>looking to sell his business because the landlord</b></p> <p>19 <b>would not approve the transactions because of Russ's</b></p> <p>20 <b>credit issues?</b></p> <p>21 MR. ALTMAN: Objection. Form.</p> <p>22 BY THE WITNESS:</p> <p>23 A. My opinion is based on Mr. Russ's</p> <p>24 testimony that he -- while he was being sued by</p> <p>25 Northern, he attempted to purchase three check</p>

<p style="text-align: right;">90</p> <p>1 DEPOSITION OF STAN SMITH, Ph.D.  2 cashing stations from a competitor, yes, and failed  3 as a result of the issues that underlie the  4 allegations in this case.  5 BY MR. LILLIENSTEIN:  6 <b>Q. You said "testimony" but you didn't mean</b>  7 <b>testimony, did you?</b>  8 A. Why did I not mean it?  9 <b>Q. Did he -- did you review any of</b>  10 <b>Mr. Russ's testimony in this case?</b>  11 A. Yes, all the notes taken by Brian  12 Ebling, Mr. Russ's and the other plaintiffs'  13 testimony.  14 <b>Q. When you refer to testimony, you're</b>  15 <b>talking about what they said during the telephone</b>  16 <b>interviews?</b>  17 A. That's correct.  18 <b>Q. And if any of the facts told to your</b>  19 <b>staff were not in fact the case, that they were not</b>  20 <b>true or that they did not take place, would that</b>  21 <b>affect your opinion?</b>  22 A. Not at all because my opinion is based  23 on these statements, they're based on the failure to  24 get three check cashing stations. Whether that  25 happened or not, this is the loss. This is the loss</p>	<p style="text-align: right;">92</p> <p>1 DEPOSITION OF STAN SMITH, Ph.D.  2 each of these questions because you always start  3 with "did you assume" and I keep meaning to correct  4 you. So it would help if you say, did you base your  5 opinions on the statement that said, and then you  6 can include the subsequent facts. Because as I said  7 before, these are not assumptions that I have made.  8 <b>Q. Did you base your opinion on the</b>  9 <b>statements that Mr. Russ allegedly made to your</b>  10 <b>staff that his goods stores generate approximately</b>  11 <b>\$12,000 per month while costing approximately \$6,000</b>  12 <b>per month to operate, thereby generating profit of</b>  13 <b>\$72,000 a year?</b>  14 A. I have a little trouble with the word  15 "allegedly," but if I can side-step that because I  16 believe that those were made to the staff, but the  17 answer then would be yes.  18 <b>Q. And what is the phrase you want me to</b>  19 <b>use?</b>  20 A. Just -- well, these are not assumptions.  21 As I've said, I have based my opinions on the  22 statements of the testimony of the plaintiffs, so I  23 apologize if you think I'm overly directing you, but  24 I think it will be shortened if you ask it in the  25 manner where I don't have to object to the</p>
<p style="text-align: right;">91</p> <p>1 DEPOSITION OF STAN SMITH, Ph.D.  2 based on the statements.  3 <b>Q. Okay. So you assumed the statements</b>  4 <b>were true --</b>  5 A. No. Let me caution you. We've covered  6 that earlier in this deposition when you asked  7 similar questions. I did not assume they were true.  8 I assumed that this is what Mr. Russ will -- I was  9 told by Mr. Russ is this is what he would say at  10 court in sworn testimony.  11 And again, I was asked by  12 Mr. Chittur, my assignment was to give the jury the  13 dollar value impact or assessment of the fact  14 testimony that I understand will be presented at  15 trial. I leave it to the trier of fact to determine  16 issues of veracity.  17 <b>Q. And in forming your opinion, did you</b>  18 <b>assume that Mr. Russ's goods stores generate</b>  19 <b>approximately \$12,000 a month?</b>  20 A. I based it on his statement that they  21 do.  22 <b>Q. And do you assume that they generate</b>  23 <b>approximately 12,000 per month while costing</b>  24 <b>approximately 6,000 per month to operate?</b>  25 A. Mr. Lillienstein, if I could rephrase</p>	<p style="text-align: right;">93</p> <p>1 DEPOSITION OF STAN SMITH, Ph.D.  2 assumption statement.  3 <b>Q. That's what I'm trying to do.</b>  4 <b>Is your opinion based on the</b>  5 <b>statement that Mr. Russ supposedly made to your</b>  6 <b>staff that two of the three stores that Mr. Russ had</b>  7 <b>the opportunity to purchase would have generated at</b>  8 <b>least \$72,000 per year and that the third store</b>  9 <b>would have generated \$25,000 per year in profit?</b>  10 A. Yes.  11 THE VIDEOGRAPHER: Counsel, there's five  12 minutes left on this tape.  13 BY MR. LILLIENSTEIN:  14 <b>Q. And I believe your report states that it</b>  15 <b>was appropriate to calculate Mr. Russ's loss of</b>  16 <b>business opportunity from January 1, 2007 to allow</b>  17 <b>for a reasonable time for Mr. Russ to purchase the</b>  18 <b>three additional locations and have them produce at</b>  19 <b>the rate of his other stores; is that correct?</b>  20 A. Yes.  21 <b>Q. Now, in calculating Mr. Russ's loss of</b>  22 <b>business profit at -- first of all, did you</b>  23 <b>calculate them to be \$4,470,906?</b>  24 A. Can you tell me where you are reading  25 that number? I see something slightly different. I</p>

<p style="text-align: right;">94</p> <p>1 DEPOSITION OF STAN SMITH, Ph.D.</p> <p>2 see. Well, I still don't know where you --</p> <p>3 <b>Q. I see it at the bottom of Page 3.</b></p> <p>4 A. Of exhibit --</p> <p>5 <b>Q. Of the Russ discounted report.</b></p> <p>6 A. Okay. I got the Russ discounted report.</p> <p>7 <b>Q. The last paragraph at the bottom on Page</b></p> <p>8 <b>3.</b></p> <p>9 A. Well, that figure assumes losses to age</p> <p>10 79, but I think it's more realistic that a trier of</p> <p>11 fact may consider losses to an earlier date. So on</p> <p>12 Page 15 of that very same exhibit I make reference</p> <p>13 at the bottom of Page 3 that any assumed date for</p> <p>14 the cessation of damages may be read from Table 4</p> <p>15 and that, for example, over a five-year loss -- over</p> <p>16 a five-year period, the loss is 816,000,</p> <p>17 approximately. And to age 67, the loss is</p> <p>18 3,031,000, approximately.</p> <p>19 I'm reading now from the top of</p> <p>20 Page 4 of the AA exhibit, which is also summarized</p> <p>21 on Page 15 of that same exhibit in reference to</p> <p>22 Table 4-D, standing for "discount," of that exhibit.</p> <p>23 <b>Q. Would you agree that if -- I believe</b></p> <p>24 <b>what you just said is -- I'm characterizing probably</b></p> <p>25 <b>but you'll tell me if I'm wrong -- that if Mr. Russ</b></p>	<p style="text-align: right;">96</p> <p>1 <b>DEPOSITION OF STAN SMITH, Ph.D.</b></p> <p>2 THE VIDEOGRAPHER: Counsel, I need to</p> <p>3 switch the tape.</p> <p>4 MR. LILLIENSTEIN: I guess we'll have to</p> <p>5 wait for the answer.</p> <p>6 THE VIDEOGRAPHER: We're going off the</p> <p>7 record at the end of Tape No. 2. The time is 11:11</p> <p>8 a.m.</p> <p>9 (Whereupon, there was an</p> <p>10 intermission.)</p> <p>11 (Mr. Strutinskiy left</p> <p>12 proceedings.)</p> <p>13 THE VIDEOGRAPHER: We're back on the record</p> <p>14 at the beginning of Tape No. 3. The time is 11:25.</p> <p>15 BY MR. LILLIENSTEIN:</p> <p>16 <b>Q. Mr. Smith, when we broke, you were about</b></p> <p>17 <b>to answer a question.</b></p> <p>18 MR. LILLIENSTEIN: Can we have that</p> <p>19 question read back.</p> <p>20 (Whereupon, the record was</p> <p>21 read as requested.)</p> <p>22 BY THE WITNESS:</p> <p>23 A. I don't think I can answer the question.</p> <p>24 I don't know really what would it take to achieve a</p> <p>25 complete remedy for Mr. Russ.</p>
<p style="text-align: right;">95</p> <p>1 <b>DEPOSITION OF STAN SMITH, Ph.D.</b></p> <p>2 <b>is able to recover from the loss of opportunity at</b></p> <p>3 <b>an earlier date other than his -- the end of his</b></p> <p>4 <b>life expectancy, that the loss would cease as of</b></p> <p>5 <b>that date?</b></p> <p>6 A. Correct.</p> <p>7 The reporter is indicating we have</p> <p>8 two minutes left.</p> <p>9 <b>Q. I saw the "V." I saw the victory sign</b></p> <p>10 <b>that time.</b></p> <p>11 A. Yes. It does not mean your ahead two to</p> <p>12 nothing.</p> <p>13 <b>Q. You've used that before.</b></p> <p>14 A. I'll think of a new joke.</p> <p>15 <b>Q. Okay. Now, if Mr. Russ succeeds in this</b></p> <p>16 <b>case would you expect he would be able to recover</b></p> <p>17 <b>from the loss of opportunity at an earlier date?</b></p> <p>18 A. I don't know that I have come to an</p> <p>19 opinion about that determination. I would like to</p> <p>20 think about it.</p> <p>21 When you say "succeeds in this</p> <p>22 case," what do you mean with regard to this</p> <p>23 particular element of damage?</p> <p>24 <b>Q. If he's able to establish that Northern</b></p> <p>25 <b>Leasing had no right to impair his credit.</b></p>	<p style="text-align: right;">97</p> <p>1 DEPOSITION OF STAN SMITH, Ph.D.</p> <p>2 BY MR. LILLIENSTEIN:</p> <p>3 <b>Q. When did the loss of business</b></p> <p>4 <b>opportunity begin as far as you're concerned?</b></p> <p>5 A. In 2007, so we believe late '06 or</p> <p>6 sometime in '06. We effectively started the loss in</p> <p>7 2007.</p> <p>8 <b>Q. January 1, '07; is that correct?</b></p> <p>9 A. Well, for the year, yes, of the whole</p> <p>10 year.</p> <p>11 <b>Q. Would the -- would you agree that if</b></p> <p>12 <b>Mr. Russ were able to have the derogatory credit</b></p> <p>13 <b>reference on his credit report expunged, that that</b></p> <p>14 <b>would allow him to recover from the loss?</b></p> <p>15 A. Well, frankly, I doubt it, but I've not</p> <p>16 been asked to arrive at an opinion regarding that.</p> <p>17 I don't really see how. If those business</p> <p>18 opportunities are no longer available, then how can</p> <p>19 he recapture this lost income stream?</p> <p>20 <b>Q. So are you assuming there will never be</b></p> <p>21 <b>any other business opportunities?</b></p> <p>22 A. I am not assuming anything. You asked</p> <p>23 me about the loss. I told you I have no opinion</p> <p>24 about the cessation. I told you I haven't really</p> <p>25 been asked to give an opinion about what it would</p>



<p style="text-align: right;">98</p> <p>1 DEPOSITION OF STAN SMITH, Ph.D.  2 take for him to completely recover from this loss of  3 business opportunity, and I gave you an example of  4 why. So it could be that if he does not have the  5 opportunity to buy three additional such businesses  6 generating this level of profit, that could be one  7 reason.  8 <b>Q. The loss that you've calculated is based</b>  9 <b>on Mr. Russ's testimony, to use your word, that he</b>  10 <b>was unable to acquire these three business locations</b>  11 <b>because of the damage to his credit caused by</b>  12 <b>Northern Leasing; is that correct?</b>  13 A. Yes.  14 <b>Q. Is it true that Northern Leasing -- that</b>  15 <b>Mr. Russ also told you that Northern Leasing</b>  16 <b>delinquencies were expunged from his record</b>  17 <b>following the dismissal of their lawsuits,</b>  18 <b>approximately the beginning of 2007?</b>  19 MR. ALTMAN: Objection. Foundation.  20 BY THE WITNESS:  21 A. Mr. Russ indicated that he believed that  22 the delinquencies were expunged approximately the  23 end of '07 subsequent to the dismissal of the  24 lawsuit, so yes. I didn't memorize all the facts in  25 your question but I think that was your question,</p>	<p style="text-align: right;">100</p> <p>1 <b>DEPOSITION OF STAN SMITH, Ph.D.</b>  2 <b>opportunity.</b>  3 MR. ALTMAN: Objection. Form.  4 BY THE WITNESS:  5 A. If you mean that he has been able to  6 reestablish the income stream that I have assessed  7 that he claims he lost and that that income stream  8 has the same likelihood of being provided into the  9 future as it did had he been able to acquire the  10 stores as of the time he had made his initial  11 efforts, so that there would be an absolute complete  12 replacement of income with the same degree of  13 certainty at that time, yes.  14 So it's equivalent to saying if  15 somebody stole your 1999 Chevrolet and you didn't  16 have use of it for three years but then gave you  17 another 1999 Chevrolet after three years with the  18 exact same mileage and same quality and same color,  19 in as good a shape, then I would regard that as a  20 recovery at that time.  21 BY MR. LILLIENSTEIN:  22 <b>Q. Your testimony -- your report provides</b>  23 <b>for the possibility of an earlier cessation of</b>  24 <b>damages other than the end of his life expectancy,</b>  25 <b>correct?</b></p>
<p style="text-align: right;">99</p> <p>1 DEPOSITION OF STAN SMITH, Ph.D.  2 right?  3 BY MR. LILLIENSTEIN:  4 <b>Q. Yes. So I want you to now assume that</b>  5 <b>Mr. Russ was able to recover from the loss of</b>  6 <b>opportunity in early 2007, assume that --</b>  7 MR. ALTMAN: Objection. Misstates  8 testimony.  9 BY MR. LILLIENSTEIN:  10 <b>Q. What would be your opinion as to the</b>  11 <b>amount of business opportunity loss that Mr. Russ</b>  12 <b>sustained in that case?</b>  13 A. You need to specify further the  14 hypothetical. How does he recover from the loss of  15 business opportunity?  16 <b>Q. I don't want you to care. I want you to</b>  17 <b>assume he recovered fully.</b>  18 MR. ALTMAN: Objection. The witness will  19 answer a hypothetical question if he thinks he needs  20 to.  21 BY MR. LILLIENSTEIN:  22 <b>Q. I want you to assume that he recovered.</b>  23 A. I don't know what you mean by  24 "recovered."  25 <b>Q. That there is no more loss of business</b></p>	<p style="text-align: right;">101</p> <p>1 <b>DEPOSITION OF STAN SMITH, Ph.D.</b>  2 A. It provides for the jury, the trier of  3 fact, to use the table and arrive at an answer if  4 they made that determination, yes. It doesn't  5 provide for the circumstances, it only provides for  6 the ability to make such calculations.  7 <b>Q. Okay. What would be the calculation if</b>  8 <b>the cessation of damages took place in early 2007?</b>  9 A. It would be for that -- well, it would  10 be for that portion of 2007.  11 <b>Q. And can you quantify that for me?</b>  12 A. You have to give me more facts.  13 <b>Q. What facts do you need?</b>  14 A. Can you give me the hypothetical that it  15 took place, say, in -- by July 1 of '07, a half a  16 year?  17 <b>Q. Yes.</b>  18 A. Then we would take a half a year of the  19 '07 number.  20 <b>Q. And likewise, if it happened in -- at</b>  21 <b>the end of three months, then you would take one</b>  22 <b>quarter?</b>  23 A. Correct.  24 <b>Q. Now, you didn't see any documentation</b>  25 <b>to -- withdrawn.</b></p>



<p style="text-align: right;">102</p> <p>1 <b>DEPOSITION OF STAN SMITH, Ph.D.</b></p> <p>2 <b>Other than whatever Mr. Russ said</b></p> <p>3 <b>during his telephone interview with your staff,</b></p> <p>4 <b>isn't it true that you saw no documentary or other</b></p> <p>5 <b>evidence indicating that Mr. Russ had an opportunity</b></p> <p>6 <b>to purchase three check cashing locations from a</b></p> <p>7 <b>competitor?</b></p> <p>8 MR. ALTMAN: Objection. Foundation.</p> <p>9 BY THE WITNESS:</p> <p>10 A. We didn't seek any documentation, just</p> <p>11 so you know, and I don't -- let me just take a look</p> <p>12 at Mr. Russ's file.</p> <p>13 I assume you mean in addition to</p> <p>14 whatever may be in the complaint?</p> <p>15 BY MR. LILLIENSTEIN:</p> <p>16 <b>Q. I'm saying in addition to whatever he</b></p> <p>17 <b>said during his telephone interview.</b></p> <p>18 A. And whatever there may be in the</p> <p>19 complaint.</p> <p>20 <b>Q. Well, if there is something in the</b></p> <p>21 <b>complaint, I want you to tell me that.</b></p> <p>22 A. Let me just say the complaint will speak</p> <p>23 for itself, so I won't look at the complaint just to</p> <p>24 save time. Because you have read it more thoroughly</p> <p>25 than I so I won't dispute whether it's in or not.</p>	<p style="text-align: right;">104</p> <p>1 DEPOSITION OF STAN SMITH, Ph.D.</p> <p>2 <b>Q. Do you know whether your staff asked</b></p> <p>3 <b>Mr. Russ if they were going concerns?</b></p> <p>4 A. I don't know. But again, it wouldn't be</p> <p>5 specifically something that would affect my</p> <p>6 calculations because again, my task was to represent</p> <p>7 what we understood to be his testimony at trial</p> <p>8 about the income stream from these.</p> <p>9 <b>Q. So you wouldn't base your opinion on</b></p> <p>10 <b>anything that Mr. Russ told you during the telephone</b></p> <p>11 <b>interview?</b></p> <p>12 MR. ALTMAN: Objection. Misstates his</p> <p>13 testimony.</p> <p>14 BY MR. LILLIENSTEIN:</p> <p>15 <b>Q. Would you have based your opinion on</b></p> <p>16 <b>anything that Mr. Russ had told you during the</b></p> <p>17 <b>telephone interviews?</b></p> <p>18 A. I base my opinion on what he did tell</p> <p>19 us. I can't tell you what I would base my opinion</p> <p>20 on if he told us something different.</p> <p>21 <b>Q. If he told you that he had the</b></p> <p>22 <b>opportunity to purchase four locations, would you</b></p> <p>23 <b>have given an opinion based on that?</b></p> <p>24 A. I can tell you what I did base my</p> <p>25 opinion on. I would have to think about that. I'm</p>
<p style="text-align: right;">103</p> <p>1 DEPOSITION OF STAN SMITH, Ph.D.</p> <p>2 I'll just say whatever about that issue, which may</p> <p>3 include nothing, is in the complaint. I'll let the</p> <p>4 complaint alone.</p> <p>5 I'm just reviewing this --</p> <p>6 <b>Q. What are you looking at now?</b></p> <p>7 A. My entire file for Mr. Russ, which is</p> <p>8 about a thousand pages.</p> <p>9 I don't recall that there was</p> <p>10 information in the file further to that issue. So</p> <p>11 I'm not quickly seeing anything so I'll say likely</p> <p>12 not.</p> <p>13 <b>Q. Based on Mr. Russ's telephone interview</b></p> <p>14 <b>with your staff, is it your understanding that the</b></p> <p>15 <b>three locations that he could have -- the business</b></p> <p>16 <b>locations that he wanted to acquire were going</b></p> <p>17 <b>concerns?</b></p> <p>18 A. I'm unaware of additional details about</p> <p>19 those business opportunities other than Mr. Russ</p> <p>20 characterized them as three check cashing locations</p> <p>21 that were to be acquired from a competitor who was</p> <p>22 looking to sell his business. That would indicate</p> <p>23 to me that they were going concerns, but I'm not</p> <p>24 going to offer an opinion one way or the other about</p> <p>25 that. That's just what I have in my notes.</p>	<p style="text-align: right;">105</p> <p>1 DEPOSITION OF STAN SMITH, Ph.D.</p> <p>2 not certain.</p> <p>3 <b>Q. I would like you to think about it and</b></p> <p>4 <b>give me an answer.</b></p> <p>5 A. I'll give an answer to Mr. Chittur next</p> <p>6 week after I've had some time to digest it.</p> <p>7 <b>Q. You're not going to answer my question?</b></p> <p>8 A. Yes, I will. I just need some time to</p> <p>9 think about it.</p> <p>10 <b>Q. And would you have given your opinion --</b></p> <p>11 <b>would your opinion have been different if Mr. Russ</b></p> <p>12 <b>told you that each of the -- his existing stores was</b></p> <p>13 <b>generating \$200,000 a year in profit?</b></p> <p>14 A. Same answer. I can tell you that --</p> <p>15 what I did do here. I can't tell you what I would</p> <p>16 have done if the answers were significantly</p> <p>17 different, and you are now posing hypotheticals that</p> <p>18 are significantly different.</p> <p>19 <b>Q. Would your opinion have been different</b></p> <p>20 <b>if Mr. Russ told you that his existing locations</b></p> <p>21 <b>were generating \$50,000 in profit?</b></p> <p>22 A. Are you talking about these three</p> <p>23 locations?</p> <p>24 <b>Q. No. I'm talking about his existing</b></p> <p>25 <b>locations. You based your estimate on what he would</b></p>

<p style="text-align: right;">106</p> <p>1           <b>DEPOSITION OF STAN SMITH, Ph.D.</b>  2   <b>earn purchasing these three locations on what</b>  3   <b>Mr. Russ told you his existing locations were</b>  4   <b>generating; isn't that true?</b>  5       MR. ALTMAN: Objection. Misstates  6   testimony. Foundation.  7   BY THE WITNESS:  8       A.   He indicated that two of the stores  9   would have made at least 72,000 per year in profit  10   and as much as a hundred thousand or more, and the  11   third would have made 25,000 a year in profit.  12   BY MR. LILLIENSTEIN:  13       <b>Q.   So you based your opinion on that</b>  14       <b>statement?</b>  15       A.   On those statements, yes.  16       MR. ALTMAN: Objection. Misstates his  17   testimony. And form.  18   BY MR. LILLIENSTEIN:  19       <b>Q.   Did Mr. Russ tell your staff whether he</b>  20       <b>investigated the profitability of the stores he</b>  21       <b>wanted to acquire?</b>  22       MR. ALTMAN: Objection. Foundation.  23   BY THE WITNESS:  24       A.   Look, you have to understand again my  25   assignment was to take -- find out and take what we</p>	<p style="text-align: right;">108</p> <p>1           DEPOSITION OF STAN SMITH, Ph.D.  2   BY MR. LILLIENSTEIN:  3       <b>Q.   Dr. Smith?</b>  4       A.   We normally --  5       MR. ALTMAN: Wait. Hold on. Hold on.  6   What are we doing? Are we letting him answer the  7   first question or are you withdrawing that question  8   and asking a new one?  9       MR. LILLIENSTEIN: Keith, the rule is that  10   you can make an objection, you can't make a speaking  11   objection, and then let the witness answer the  12   question.  13       MR. ALTMAN: I'm not making a speaking  14   objection. You interrupted his answer. You need to  15   let him complete his answer or withdraw the  16   question. That's all I'm asking. It's only proper.  17       MR. LILLIENSTEIN: I think the witness is  18   ready to answer.  19       THE WITNESS: I think Mr. Lillienstein --  20       MR. ALTMAN: Wait. Before we go forward, I  21   want to know what question he's answering.  22       MR. LILLIENSTEIN: The question I asked.  23       MR. ALTMAN: Which question is it?  24           Can you please read back the  25   question for me.</p>
<p style="text-align: right;">107</p> <p>1           DEPOSITION OF STAN SMITH, Ph.D.  2   understood to be the testimony that Mr. Russ would  3   be providing at trial and to put a dollar value on  4   it. We didn't act as a business broker in this  5   transaction or an investigator, nor did we evaluate  6   these businesses. And if he -- it didn't  7   specifically matter to me that these were check  8   cashing locations. It could have been a business of  9   a different nature that Mr. Russ indicated he had  10   sought to purchase and felt competent to manage. So  11   we took the information he gave us because the  12   assignment was to put dollars on the testimony.  13   BY MR. LILLIENSTEIN:  14       <b>Q.   And he didn't tell you whether he</b>  15       <b>investigated the profitability of those stores</b>  16       <b>before acquiring them -- before trying to acquire</b>  17       <b>them?</b>  18       A.   Well, we normally wouldn't inquire  19   into --  20       <b>Q.   I'm not asking what you normally would</b>  21       <b>do. I'm asking in this case, did he tell you that?</b>  22       MR. ALTMAN: Hold on. You asked the  23   witness the question, he started answering, you  24   interrupted him. Let him finish the answer unless  25   you want to withdraw the first question.</p>	<p style="text-align: right;">109</p> <p>1           DEPOSITION OF STAN SMITH, Ph.D.  2   MR. LILLIENSTEIN: I'll rephrase the  3   question.  4       MR. ALTMAN: That's fine.  5   BY MR. LILLIENSTEIN:  6       <b>Q.   Did Mr. Russ tell your staff that he</b>  7       <b>investigated the profitability of the stores he</b>  8       <b>wanted to acquire before trying to acquire them?</b>  9       A.   We normally wouldn't inquire into that  10   and therefore I don't believe he did.  11       <b>Q.   Okay. I believe it's accurate to state</b>  12       <b>you made no attempt to examine the profitability of</b>  13       <b>those stores?</b>  14       A.   Since the assignment was of a completely  15   different nature, that would be outside the scope of  16   our assignment. It would not -- so, the answer is  17   no.  18       <b>Q.   You made no attempt?</b>  19       A.   Mr. Lillienstein, no matter how many  20   times you ask the question, my answer is invariant.  21   What was unclear about my answer that would help you  22   understand it better?  23       <b>Q.   The answer was no. But the question was</b>  24       <b>did you -- you made no attempt to examine the</b>  25       <b>profitability of the store, so I'm just trying to</b></p>

<p style="text-align: right;">110</p> <p>1           <b>DEPOSITION OF STAN SMITH, Ph.D.</b>  2   <b>clarify.</b>  3           <b>Did you make any attempt to examine</b>  4   <b>the profitability of the stores?</b>  5       A.   Because it was outside the scope of our  6   assignment and not relevant to the task we were  7   given, I did not undertake to assess the  8   profitability of the stores beyond what Mr. Russ  9   indicated was the profitability.  10   <b>Q.   Now, if you were to analyze a</b>  11   <b>prospective purchase of a store as an investment,</b>  12   <b>what would you, as an economist, want to look at to</b>  13   <b>determine its profitability?</b>  14       A.   I'm not going to get into that here.  15   It's completely off topic. And if you want, I can  16   take the 10 hours that it would take to give you a  17   preliminary answer off the record at some other  18   time. Would you want to see --  19   <b>Q.   I'm not going to just accept that you</b>  20   <b>refuse to answer my question.</b>  21       A.   It's not refuse. If you're prepared for  22   a 10-hour answer, I will give it to you.  23   <b>Q.   Why don't you try to give me the best</b>  24   <b>answer you can?</b>  25       A.   I can't.</p>	<p style="text-align: right;">112</p> <p>1           <b>DEPOSITION OF STAN SMITH, Ph.D.</b>  2       A.   I understood that they were within what  3   I would consider to be his geographic area but I  4   don't know their addresses.  5   <b>Q.   Is it true that you never saw any</b>  6   <b>information about where the locations of the</b>  7   <b>prospective businesses were?</b>  8       A.   Mr. Lillienstein, I've said --  9       MR. ALTMAN: Objection. Form.  10   BY THE WITNESS:  11       A.   I've said repeatedly, you're asking many  12   questions about these businesses and I wonder if  13   you've ever had the opportunity to depose Mr. Russ  14   because these questions appear to be of compelling  15   interest to you. They were not of compelling  16   interest to me because the answers would not have  17   benefited me in any way regarding my assignment, and  18   so I don't have documents regarding the businesses.  19       If you can appreciate what my  20   assignment was, and I repeated it several times but  21   I'll do it one more time, to take the testimony that  22   Mr. Russ indicates he will be giving under oath at  23   trial and put a dollar value behind it, then you can  24   appreciate that it was not within the scope of my  25   assignment to determine whether Mr. Russ was stupid</p>
<p style="text-align: right;">111</p> <p>1           DEPOSITION OF STAN SMITH, Ph.D.  2       MR. ALTMAN: Hold on. He'll answer the  3   question as he sees fit. The witness has told you  4   he thinks it will take an extended period of time.  5   If you want to engage in that time, the witness will  6   certainly accommodate you. He's just advising you.  7   And if he starts answering the question you need to  8   let him finish regardless of how long it takes.  9   BY THE WITNESS:  10       A.   A business valuation is a very complex  11   matter. It depends in particular on each business.  12   But since you aren't -- so that's the short answer.  13       The long answer is, I need to  14   review all the documents of the business and then  15   tell you how I would go about evaluating it. That's  16   the short answer.  17   BY MR. LILLIENSTEIN:  18   <b>Q.   You didn't see any of the documents of</b>  19   <b>the business in this case, correct?</b>  20       A.   I think you asked the question before,  21   but the answer is no.  22   <b>Q.   You didn't see the documents?</b>  23       A.   Correct.  24   <b>Q.   Did Mr. Russ tell you where these</b>  25   <b>potential business locations were actually located?</b></p>	<p style="text-align: right;">113</p> <p>1           DEPOSITION OF STAN SMITH, Ph.D.  2   or foolish or brilliant in seeking to acquire these  3   businesses.  4   BY MR. LILLIENSTEIN:  5   <b>Q.   Did Mr. Russ tell you what he would have</b>  6   <b>to pay to acquire the businesses?</b>  7       A.   No.  8   <b>Q.   In evaluating the profitability of a</b>  9   <b>business, would you want to know what the purchaser</b>  10   <b>of that business would have to pay?</b>  11       A.   I evaluated the cash flow of this  12   business, I didn't need to know what he paid.  13   <b>Q.   You evaluated only the cash flow; is</b>  14   <b>that correct?</b>  15       A.   The profit cash flow, yes.  16   <b>Q.   Okay. And if you were to arrive at a</b>  17   <b>trial figure for what his loss was, wouldn't you</b>  18   <b>have to factor in whatever amount he would have to</b>  19   <b>pay for the business?</b>  20       A.   No.  21   <b>Q.   Why not?</b>  22       A.   Well, you would have to tell me why I'm  23   wrong. I tell you what I did. Again, there's 4  24   billion things I didn't do and I don't have an  25   answer for the -- for why I didn't do 4 billion</p>

<p style="text-align: right;">114</p> <p>1 DEPOSITION OF STAN SMITH, Ph.D.  2 other things even though you think a few of them  3 might have been a good idea.  4 <b>Q. I'm asking you a question that I think</b>  5 <b>should be very simple for an economist to answer and</b>  6 <b>that is when you're purchasing a business and</b>  7 <b>examining whether or not it will be profitable, do</b>  8 <b>you have to factor in the cost of acquisition?</b>  9 A. I was asked to assess the value of the  10 cash flows that he lost from his inability to  11 acquire the business, and so --  12 <b>Q. Where in your report -- I'm sorry. Are</b>  13 <b>you finished?</b>  14 A. So this is the number. And in my report  15 I state this is the loss of business profits.  16 <b>Q. So you don't state that it's a loss of</b>  17 <b>cash flow?</b>  18 A. It's the --  19 <b>Q. Your report nowhere uses the phrase</b>  20 <b>"cash flow," does it?</b>  21 A. Correct.  22 MR. ALTMAN: Objection. Foundation.  23 BY THE WITNESS:  24 A. These profits would be his cash flow.  25</p>	<p style="text-align: right;">116</p> <p>1 DEPOSITION OF STAN SMITH, Ph.D.  2 <b>Q. What did you see?</b>  3 A. I have a tax return for a company called  4 Rapid Cash that Mr. Russ indicated was his company.  5 It indicates --  6 <b>Q. Can you --</b>  7 A. It indicates that it was making a  8 profit.  9 <b>Q. What is the date of that tax return?</b>  10 A. 2003.  11 <b>Q. And what is the taxpayer's name on that</b>  12 <b>tax return?</b>  13 A. It's a subchapter S called Rapid Cash.  14 <b>Q. Is that the full name?</b>  15 A. Rapid Cash Title Loans. In the notes  16 Mr. Russ indicates that he owns a company called  17 Rapid Cash Advances that offers payday advances.  18 <b>Q. That tax return that you're looking at,</b>  19 <b>does it have a Bates stamp number on it?</b>  20 A. No.  21 <b>Q. Would it be okay with you if we made a</b>  22 <b>copy of that and provided it to me because it has</b>  23 <b>not been produced in discovery?</b>  24 A. If --  25 MR. ALTMAN: Well, I don't know that that's</p>
<p style="text-align: right;">115</p> <p>1 DEPOSITION OF STAN SMITH, Ph.D.  2 BY MR. LILLIENSTEIN:  3 <b>Q. Okay. You're not equating the word</b>  4 <b>"profit" to cash flow?</b>  5 A. Yes. If he had bought these businesses  6 for cash, this is what his cash flow would be, he  7 tells us.  8 <b>Q. Okay.</b>  9 A. These profits pretax.  10 <b>Q. And other than what Mr. Russ told you</b>  11 <b>during the telephone interview, you saw no other</b>  12 <b>documentary or other evidence to support the claim</b>  13 <b>that Mr. Russ owned other check cashing businesses,</b>  14 <b>correct?</b>  15 MR. ALTMAN: Objection. Form. Foundation.  16 BY THE WITNESS:  17 A. I wasn't seeking to establish support.  18 We didn't ask for it and I don't believe any was  19 provided.  20 BY MR. LILLIENSTEIN:  21 <b>Q. And you never saw any documents relating</b>  22 <b>to the existing businesses, did you? In other</b>  23 <b>words, any documents that would show whether that</b>  24 <b>business was generating a profit or not?</b>  25 A. Not true.</p>	<p style="text-align: right;">117</p> <p>1 DEPOSITION OF STAN SMITH, Ph.D.  2 exactly true but I certainly don't have any  3 objections to the witness making a copy of that and  4 providing it to you irrespective of whether it's  5 been produced to you or not.  6 BY THE WITNESS:  7 A. Yes, so long as the plaintiff's counsel  8 has no objection, then I certainly have none.  9 BY MR. LILLIENSTEIN:  10 <b>Q. Okay.</b>  11 MR. ALTMAN: I don't have any objection,  12 Dr. Smith. If there's another document that counsel  13 believes he has not received, it's certainly easier  14 for you to give it to him now than to fight about it  15 so you certainly may give him anything you received.  16 THE WITNESS: All right. And we can make a  17 copy during the next break, I assume. There's a  18 copy machine here.  19 MR. LILLIENSTEIN: He's just asking if they  20 can make a copy there.  21 BY MR. LILLIENSTEIN:  22 <b>Q. Dr. Smith, before you put those</b>  23 <b>documents away, is there any other documents that</b>  24 <b>you were shown that would indicate the profitability</b>  25 <b>of Mr. Russ's stores?</b></p>

<p style="text-align: right;">118</p> <p>1           <b>DEPOSITION OF STAN SMITH, Ph.D.</b></p> <p>2           A.   Not that I can quickly determine.</p> <p>3           <b>Q.   And now looking at the tax return that</b></p> <p>4 <b>you were just referring to, can you tell me whether</b></p> <p>5 <b>that -- what is the profit indicated on that tax</b></p> <p>6 <b>return for the store for the year 2003?</b></p> <p>7           MR. ALTMAN: Objection. Foundation.</p> <p>8 BY THE WITNESS:</p> <p>9           A.   I actually can't assert to you that it</p> <p>10 is -- when you say "the store," Mr. Russ indicated</p> <p>11 he had five locations in '02, so I believe this</p> <p>12 would cover more than one store in Orlando.</p> <p>13           And I actually am not 100 percent</p> <p>14 sure that it's the same corporate entity that owns</p> <p>15 the stores because Mr. Russ indicated that his</p> <p>16 company was called Rapid Cash Advances and this one</p> <p>17 is called Rapid Cash Title so he may have -- I</p> <p>18 understand your client has a whole rabbit warren</p> <p>19 full of corporations that are interrelated and pass</p> <p>20 assets back and forth, so it's not unusual for one</p> <p>21 person to own more than one subchapter</p> <p>22 S-corporation.</p> <p>23           This one has a slightly different</p> <p>24 name, Rapid Cash Title Loans. And since I know of</p> <p>25 people who are in the business of lending money on</p>	<p style="text-align: right;">120</p> <p>1           DEPOSITION OF STAN SMITH, Ph.D.</p> <p>2           <b>Q.   What is the ordinary income?</b></p> <p>3           A.   Just under 50,000.</p> <p>4           MR. ALTMAN: I'm sorry. Can you repeat</p> <p>5 that number. I couldn't hear it.</p> <p>6           MR. LILLIENSTEIN: Just under 50,000. Just</p> <p>7 under.</p> <p>8 BY MR. LILLIENSTEIN:</p> <p>9           <b>Q.   What is the exact number?</b></p> <p>10           A.   49,690.</p> <p>11           <b>Q.   And looking at the first page or two of</b></p> <p>12 <b>that tax return, what does the gross income show?</b></p> <p>13           A.   Gross receipts of 574,717.</p> <p>14           <b>Q.   I'm sorry. Repeat that please.</b></p> <p>15           A.   574,717.</p> <p>16           <b>Q.   And does it indicate the cost of or the</b></p> <p>17 <b>expenses?</b></p> <p>18           A.   It doesn't have \$419,000 worth of</p> <p>19 expenses which are itemized on Statement 1, which is</p> <p>20 not attached. It has a few other expenses.</p> <p>21           <b>Q.   419,000 exactly or what?</b></p> <p>22           A.   Approximately. It itemizes a few of</p> <p>23 them but not the vast majority.</p> <p>24           <b>Q.   What is the 419,000 number?</b></p> <p>25           A.   It's a general category called</p>
<p style="text-align: right;">119</p> <p>1           DEPOSITION OF STAN SMITH, Ph.D.</p> <p>2           second mortgages, it sounds like this could be a</p> <p>3 slightly different type of company than a Rapid Cash</p> <p>4 Advance, which is a kind of a payroll advance firm.</p> <p>5           So they may be related but not the same entity.</p> <p>6 BY MR. LILLIENSTEIN:</p> <p>7           <b>Q.   Did you rely on that document in any way</b></p> <p>8 <b>in forming your opinion?</b></p> <p>9           A.   No. So maybe we don't even need to mark</p> <p>10 it.</p> <p>11           <b>Q.   No. Don't put it away. Don't put it</b></p> <p>12 <b>away.</b></p> <p>13           <b>Does that document reflect how much</b></p> <p>14 <b>money was distributed to Mr. Russ in 2003?</b></p> <p>15           A.   Yes.</p> <p>16           <b>Q.   What is that amount?</b></p> <p>17           A.   Well, let me just say he was -- the</p> <p>18 answer is no, it doesn't.</p> <p>19           <b>Q.   What page are you looking at right now?</b></p> <p>20           A.   The K1.</p> <p>21           <b>Q.   What does the K1 show?</b></p> <p>22           A.   It shows his name, shows the name of the</p> <p>23 company, indicates that Mr. Russ owns 100 percent,</p> <p>24 the ID number. The Social Security number and the</p> <p>25 ordinary income. It doesn't show the distributions.</p>	<p style="text-align: right;">121</p> <p>1           DEPOSITION OF STAN SMITH, Ph.D.</p> <p>2           "Deductions", Line 19, which makes reference to</p> <p>3 Statement 1 which you would see the detail of the</p> <p>4 419,000.</p> <p>5           <b>Q.   I'm asking you what's the actual number?</b></p> <p>6           A.   419,858.</p> <p>7           <b>Q.   And tell me if I already asked this, but</b></p> <p>8 <b>I believe you said that there was no other documents</b></p> <p>9 <b>reflecting the profitability of Mr. Russ's existing</b></p> <p>10 <b>stores that you were given?</b></p> <p>11           A.   Not that I readily see. And again, I</p> <p>12 just caution you, this document may not be related</p> <p>13 to the stores but related to a --</p> <p>14           <b>Q.   I understand.</b></p> <p>15           A.   -- a different type of business, a</p> <p>16 similar.</p> <p>17           <b>Q.   Do you know whether your staff asked</b></p> <p>18 <b>Mr. Russ whether that was for -- the income tax</b></p> <p>19 <b>return was for the same business he was talking</b></p> <p>20 <b>about in the interview?</b></p> <p>21           A.   I don't know, but it wouldn't matter.</p> <p>22           <b>Q.   It wouldn't matter why?</b></p> <p>23           A.   If we go through my opinions, I can tell</p> <p>24 you what did matter. As I said before, there are</p> <p>25 billions of things that don't matter. And I don't</p>



<p style="text-align: right;">122</p> <p>1 DEPOSITION OF STAN SMITH, Ph.D.</p> <p>2 have an answer why they don't matter. I could just</p> <p>3 tell you why the things that do matter, matter.</p> <p>4 <b>Q. You volunteered it wouldn't have</b></p> <p>5 <b>mattered. Why wouldn't it have mattered?</b></p> <p>6 A. I just gave you the answer.</p> <p>7 <b>Q. Your answer was to say there's a million</b></p> <p>8 <b>things that don't matter and you won't tell me about</b></p> <p>9 <b>this one?</b></p> <p>10 A. I don't have a particular answer why the</p> <p>11 billion things that don't matter don't matter. If I</p> <p>12 had a copy of your college diploma in my file, it</p> <p>13 wouldn't matter either.</p> <p>14 <b>Q. All right. I'm going to make it easy</b></p> <p>15 <b>for you. I don't want you to worry about the</b></p> <p>16 <b>million things that don't matter. I'm asking you</b></p> <p>17 <b>about this one. Why didn't this tax return or any</b></p> <p>18 <b>other tax return matter?</b></p> <p>19 A. Because it didn't have anything to do</p> <p>20 with my assignment.</p> <p>21 <b>Q. Okay. And your assignment was to accept</b></p> <p>22 <b>that Mr. Russ would testify a certain way at trial</b></p> <p>23 <b>and to give an opinion based on that testimony?</b></p> <p>24 A. Generally, yes, that's correct.</p> <p>25 <b>Q. Okay. Now, with regard to your opinions</b></p>	<p style="text-align: right;">124</p> <p>1 DEPOSITION OF STAN SMITH, Ph.D.</p> <p>2 <b>Q. Your opinions attribute the same value</b></p> <p>3 <b>of a statistical life to all of the plaintiffs; is</b></p> <p>4 <b>that correct?</b></p> <p>5 A. No.</p> <p>6 <b>Q. Tell me why that's not correct.</b></p> <p>7 A. Well, each is adjusted.</p> <p>8 <b>Q. Adjusted for impairment value,</b></p> <p>9 <b>impairment rating and life expectancy?</b></p> <p>10 A. No, before the impairment rating. The</p> <p>11 average value of life applies to someone who has 45</p> <p>12 years of remaining life expectancy. If we are</p> <p>13 applying this to someone who happens to specifically</p> <p>14 have the 45 years of remaining life expectancy that</p> <p>15 the statistically averaged person in this country</p> <p>16 has left, understanding that the average person in</p> <p>17 this country is in their early 30s and so 45 years</p> <p>18 is about what each person has left for life</p> <p>19 expectancy. If we happen to have a plaintiff who</p> <p>20 has that same average, then what I would say is that</p> <p>21 that person's value of life, assuming they were a</p> <p>22 normal person within the broad range of average</p> <p>23 ability to enjoy life, that that person then would</p> <p>24 have the same value as the statistical value of</p> <p>25 life.</p>
<p style="text-align: right;">123</p> <p>1 DEPOSITION OF STAN SMITH, Ph.D.</p> <p>2 <b>on the reduced value of life. I am certain you will</b></p> <p>3 <b>correct me, but I'm going to give it a shot anyway.</b></p> <p>4 <b>That calculation relies on</b></p> <p>5 <b>essentially three numbers, does it not: The value</b></p> <p>6 <b>of a statistical life, the impairment rating or the</b></p> <p>7 <b>amount by which a person estimates his or her</b></p> <p>8 <b>quality of life to be reduced, and a person's</b></p> <p>9 <b>statistical life expectancy; is that correct?</b></p> <p>10 A. Well, let me comment on the third one,</p> <p>11 that the life expectancy is the longest to which a</p> <p>12 loss may be incurred. But I leave it to the trier</p> <p>13 of fact to determine if the impact on loss of</p> <p>14 enjoyment of life could be -- could cease at some</p> <p>15 point prior to the end of life expectancy.</p> <p>16 <b>Q. But otherwise I got it right?</b></p> <p>17 A. I would say generally, yes.</p> <p>18 <b>Q. Not bad?</b></p> <p>19 A. Excellent.</p> <p>20 <b>Q. Okay. Now, your reports refer to value</b></p> <p>21 <b>of life. Is it correct that economists frequently</b></p> <p>22 <b>refer to value of life in the literature as a value</b></p> <p>23 <b>of a statistical life or a value of an anonymous</b></p> <p>24 <b>life?</b></p> <p>25 A. Yes.</p>	<p style="text-align: right;">125</p> <p>1 DEPOSITION OF STAN SMITH, Ph.D.</p> <p>2 <b>Q. Maybe I misunderstood. But I thought</b></p> <p>3 <b>that your reports all use the same 4.2-million-</b></p> <p>4 <b>dollar figure in using 2010 dollars in calculating</b></p> <p>5 <b>this particular loss.</b></p> <p>6 A. Well, but we don't attribute that that's</p> <p>7 the value of life for each plaintiff.</p> <p>8 <b>Q. Right. And that's what I thought I was</b></p> <p>9 <b>getting at in my first question, that you --</b></p> <p>10 A. It's only a starting point but it's a</p> <p>11 starting point for -- it's the starting point in the</p> <p>12 analysis before you even bring in the particulars of</p> <p>13 the plaintiff.</p> <p>14 <b>Q. Okay. And the particulars of the</b></p> <p>15 <b>plaintiff are those two other items I mentioned, the</b></p> <p>16 <b>impairment rating and his life expectancy, his or</b></p> <p>17 <b>her life expectancy, correct?</b></p> <p>18 A. Correct.</p> <p>19 <b>Q. Okay. Now, the amount of impairment,</b></p> <p>20 <b>that was determined by you how?</b></p> <p>21 A. It wasn't determined by me.</p> <p>22 (Whereupon, there was a</p> <p>23 discussion off the record.)</p> <p>24 BY MR. LILLIENSTEIN:</p> <p>25 <b>Q. You took issue with my statement that</b></p>



<p style="text-align: right;">126</p> <p>1           <b>DEPOSITION OF STAN SMITH, Ph.D.</b></p> <p>2   <b>you determined the impairment rating and I assume</b></p> <p>3   <b>the reason is because you allowed the plaintiffs to</b></p> <p>4   <b>determine what they believed their impairment rating</b></p> <p>5   <b>was and that you then use that in your report; is</b></p> <p>6   <b>that correct?</b></p> <p>7       A.   I asked each -- again, as similar to</p> <p>8   other losses, I asked each plaintiff to indicate to</p> <p>9   us what would be their assessment at trial of their</p> <p>10 loss of quality of life or loss of enjoyment of life</p> <p>11 or impairment rating, these are all rather</p> <p>12 synonymous terms, yes.</p> <p>13       <b>Q.   You keep saying "I" but you didn't speak</b></p> <p>14   <b>to any of the plaintiffs, we already established</b></p> <p>15   <b>that, correct?</b></p> <p>16       A.   All of this is conducted. I conducted</p> <p>17 all this and utilized assistance to accomplish my</p> <p>18 objectives. So you need not reiterate that I</p> <p>19 actually did not go to the printer to print the</p> <p>20 report. There's many things that I did not</p> <p>21 personally do, but effectively I did all this. So</p> <p>22 if I say I requested, the request was passed through</p> <p>23 staff but that didn't mean I didn't request it.</p> <p>24       <b>Q.   Okay. I think the answer could have</b></p> <p>25   <b>been simpler, and I would also say that in terms of</b></p>	<p style="text-align: right;">128</p> <p>1           <b>DEPOSITION OF STAN SMITH, Ph.D.</b></p> <p>2   <b>to answer it.</b></p> <p>3       A.   I see. So I did not speak directly to</p> <p>4 the plaintiffs. I explained in great detail that</p> <p>5 all of these interviews were conducted at my</p> <p>6 direction and I have not spoken to them as yet.</p> <p>7       <b>Q.   If the plaintiff during the interview</b></p> <p>8   <b>indicated a very high impairment, say 9 or 10, and</b></p> <p>9   <b>the statements that they made during that interview</b></p> <p>10 <b>did not corroborate that 9 or 10, in your opinion,</b></p> <p>11 <b>would you accept the 9 or 10 rating and use it in</b></p> <p>12 <b>your report?</b></p> <p>13       A.   Well, your question assumes that I am a</p> <p>14 Ph.D. psychologist where I can take statements</p> <p>15 about -- and opine as to whether they corroborate or</p> <p>16 not. So I will tell you that I didn't see anything</p> <p>17 implausible in the interviews as I read them, but</p> <p>18 again, I leave it to a trier of fact.</p> <p>19           I have known people who have had</p> <p>20 minor surgery on the small toe of their foot, have</p> <p>21 catastrophic impact on their life because</p> <p>22 marathoning was the therapy that they were using to</p> <p>23 recover from child abuse and rape.</p> <p>24           So what may appear to be rather</p> <p>25 minor circumstance to some can turn out to be major</p>
<p style="text-align: right;">127</p> <p>1           <b>DEPOSITION OF STAN SMITH, Ph.D.</b></p> <p>2   <b>reiterating statements, I think the same advice</b></p> <p>3   <b>could be given to you as well. But let's leave that</b></p> <p>4   <b>as it be.</b></p> <p>5           <b>You didn't speak to any of the</b></p> <p>6   <b>plaintiffs personally, correct?</b></p> <p>7       A.   Mr. Lillienstein, you just expressed an</p> <p>8 interest to move on and save time and yet that's</p> <p>9 maybe the 10th time you asked that question, so am I</p> <p>10 to take it you're not serious in your request that I</p> <p>11 be succinct and expeditious?</p> <p>12       <b>Q.   I'll try to explain this to you. Since</b></p> <p>13 <b>this is being videotaped, it makes it much more easy</b></p> <p>14 <b>for the jury, as I'm sure you can understand, to</b></p> <p>15 <b>have one straight click where all of the relevant</b></p> <p>16 <b>information is there. So when I ask you this, it's</b></p> <p>17 <b>not because I want to waste time, it's because I</b></p> <p>18 <b>want to make it easier for the jury just as you</b></p> <p>19 <b>testified earlier that you want to make it easier</b></p> <p>20 <b>for the jury.</b></p> <p>21       A.   I understand that. But I just wonder</p> <p>22 whether plaintiff's counsel has a right to object</p> <p>23 about questions being asked and answered. I'll</p> <p>24 answer it again if there is no objection.</p> <p>25       <b>Q.   Even if there is an objection, you have</b></p>	<p style="text-align: right;">129</p> <p>1           <b>DEPOSITION OF STAN SMITH, Ph.D.</b></p> <p>2   <b>consequence to others.</b></p> <p>3       <b>Q.   But you don't really care in forming</b></p> <p>4   <b>your opinion whether it's implausible or not, you're</b></p> <p>5   <b>just going to take what they tell you and your</b></p> <p>6   <b>assignment is to take that value and then apply it</b></p> <p>7   <b>to your methodology?</b></p> <p>8       MR. ALTMAN: Objection. Misstates his</p> <p>9 testimony and form.</p> <p>10 BY THE WITNESS:</p> <p>11       A.   It does misstate what I just said.</p> <p>12 BY MR. LILLIENSTEIN:</p> <p>13       <b>Q.   Tell me if what I said is correct.</b></p> <p>14       A.   It is not correct.</p> <p>15       <b>Q.   Okay. In any case, in the case of any</b></p> <p>16 <b>of the five plaintiffs for which you've given a</b></p> <p>17 <b>report, did you not adopt the percent reduction in</b></p> <p>18 <b>life that the plaintiff told you?</b></p> <p>19       MR. ALTMAN: Objection. Form.</p> <p>20 BY THE WITNESS:</p> <p>21       A.   Well, we didn't adopt it precisely. We</p> <p>22 portrayed much of it and other things also. So the</p> <p>23 goal was to portray the testimony reasonably</p> <p>24 closely. I would have to look at each report.</p> <p>25</p>

<p style="text-align: right;">130</p> <p>1 DEPOSITION OF STAN SMITH, Ph.D.  2 BY MR. LILLIENSTEIN:  3 <b>Q. That's what I'm going to ask you to do.</b>  4 A. So let me just start, for example,  5 with --  6 <b>Q. Which one are you starting with?</b>  7 A. With Judson Russ. He indicated that  8 until the end of '07, he believed his loss to be in  9 the 20 to 30 percent -- I'm sorry. In the 70 to 80  10 percent range because this was extremely distressing  11 to him.  12 <b>Q. Where are you looking at, what page?</b>  13 A. Page 7 of the work notes, the very end  14 of that paragraph.  15 <b>Q. You're referring to the sentence which</b>  16 <b>states, "He estimates his quality of life from the</b>  17 <b>time he discovered Northern Leasing's fraud until</b>  18 <b>approximately the end of 2007 to be approximately 20</b>  19 <b>percent to 30 percent and 90 percent to 95 percent</b>  20 <b>thereafter"?</b>  21 A. I am referring to that sentence. And so  22 we illustrated his reduction to be a 40 to 80  23 percent, not a 70 to 80 percent, loss initially.  24 And then we continued on with the five to 10 percent  25 that he testified thereafter. So we took but gave</p>	<p style="text-align: right;">132</p> <p>1 <b>DEPOSITION OF STAN SMITH, Ph.D.</b>  2 A. Ms. Redner, Gordon Redner, Mr. Redner,  3 on Page 5 indicated a one-third loss or more at the  4 start and a 95 -- and five percent loss thereafter.  5 So we took the one-third at the lower end and then  6 the five percent because he said one-third or more,  7 so we showed 50 percent at the upper end and 10  8 percent thereafter.  9 <b>Q. Okay. Next.</b>  10 A. For Thomas Smith, on Page 5 of his  11 interview, I'm speaking in the interview notes  12 exhibit.  13 I assume we're fine with not  14 putting the exhibit numbers in?  15 <b>Q. Yes.</b>  16 A. He states 50 percent initially and once  17 this matter is resolved, he believes it might go  18 back to a -- a remaining quality of 80 to 90,  19 meaning a loss of 10 to 20. So that was then shown  20 at -- on the low end 40 percent mitigating down to  21 10 percent at the lower end and 60 percent  22 mitigating down to 20 percent on the upper end.  23 <b>Q. At what period of time did you use --</b>  24 A. For the mitigation?  25 <b>Q. Yeah.</b></p>
<p style="text-align: right;">131</p> <p>1 DEPOSITION OF STAN SMITH, Ph.D.  2 some lesser, more conservative figures to the jury  3 in -- by giving them a range for Mr. Russ. We can  4 go through each report but they would probably be  5 something similar.  6 <b>Q. I'm sorry. So Mr. Russ told you that he</b>  7 <b>estimated his quality of life from the time he</b>  8 <b>discovered Northern Leasing's fraud until</b>  9 <b>approximately the end of 2007 to be approximately 20</b>  10 <b>percent to 30 percent. And then what figure did you</b>  11 <b>use in your report for that same period of time?</b>  12 A. Well, okay, understand 20 to 30 percent  13 quality of life means a 70 to 80 percent loss. And  14 I illustrated the 40 to 80 percent loss so a loss as  15 little as 40 where as he said it was as little as  16 70.  17 <b>Q. Okay.</b>  18 A. Similarly with -- I'm sorry.  19 <b>Q. Let's do -- what did you do thereafter?</b>  20 <b>What do you use thereafter?</b>  21 A. He said 90 to 95 percent so we just then  22 took that.  23 <b>Q. You used both numbers or one number?</b>  24 A. Both.  25 <b>Q. Let's go to the next.</b></p>	<p style="text-align: right;">133</p> <p>1 <b>DEPOSITION OF STAN SMITH, Ph.D.</b>  2 A. Well, he said once the situation  3 resolves, he said later this year. We made that  4 shift in 2011.  5 <b>Q. Okay.</b>  6 A. Which means a mitigation by the end of  7 2010.  8 <b>Q. Next.</b>  9 A. For Ms. Serin, on Page 5 of the  10 interview notes, she indicated that since the court  11 case got dismissed, she's mostly back to normal with  12 a 90 to 95 percent remaining quality. So for 2002  13 to 2005, we portrayed to the jury those four years  14 firstly at a 30 percent loss and then at a 50  15 percent loss. The mitigation on the lower end  16 brings the loss down to as little as 5 percent, the  17 mitigation on the higher end of the range brings the  18 loss down to 10 percent as of '06.  19 <b>Q. Why did you use 10 percent when she said</b>  20 <b>90 to 95 percent?</b>  21 A. If she says 90 percent quality, that's a  22 10 percent loss.  23 <b>Q. But she said 90 to 95 percent?</b>  24 A. We used five percent on the lower end  25 and 10 percent on the upper end. It brackets her --</p>

<p style="text-align: right;">134</p> <p>1 DEPOSITION OF STAN SMITH, Ph.D.  2 it shows the lower and the upper end of her  3 statement.  4 <b>Q. So -- go ahead. You didn't finish. I</b>  5 <b>think there's one more.</b>  6 A. Mr. Lim. On the bottom of Page 6, he  7 said 50 percent during the time he was dealing with  8 Northern Leasing and 90 to 95 percent value since  9 then. So we took his 50 percent and showed it in  10 the lower end at 40 and in the upper end at 60,  11 bracketing the 50; and in the lower end showed 5  12 percent loss and at the upper end showed 10 percent  13 loss.  14 <b>Q. So the actual -- you don't give an</b>  15 <b>opinion as to what the jury should determine as</b>  16 <b>being the loss for any plaintiff, you just</b>  17 <b>illustrate ranges; is that correct?</b>  18 MR. ALTMAN: Objection. Misstates his  19 testimony.  20 BY THE WITNESS:  21 A. Well, I think more succinctly I took the  22 loss percentages given by the plaintiffs and  23 portrayed them usually in a slightly more  24 conservative or proximate manner and then project  25 them out for as long as the trier of fact may wish</p>	<p style="text-align: right;">136</p> <p>1 DEPOSITION OF STAN SMITH, Ph.D.  2 of their work.  3 Secondly, the ability to enjoy  4 their social and leisure activities, whatever those  5 may be.  6 Thirdly, the ability to derive  7 value and satisfaction from the activities of daily  8 living. And here, I don't see that any of these  9 folks were impaired from just being able to go about  10 their normal life management from buttoning their  11 shoes to grocery shopping, for example. I mean,  12 buttoning their shirts, tying their shoes or grocery  13 shopping.  14 And the fourth area is just the  15 internal emotional state, how that's affected them  16 aside from when they're engaged in social and  17 leisure activities, or aside from when they're  18 engaged in their occupation, aside from when they're  19 undertaking activities of daily living, what's their  20 general sense of well-being and how that's impacted  21 that. Taking all those areas into account, we ask  22 them for an overall assessment of the impact on the  23 quality of life.  24 I think we're going to end my  25 statement and we're going to go on break.</p>
<p style="text-align: right;">135</p> <p>1 DEPOSITION OF STAN SMITH, Ph.D.  2 to calculate the loss. But I think you're correct  3 that I did not determine the percentages.  4 BY MR. LILLIENSTEIN:  5 <b>Q. Or the actual loss?</b>  6 A. Well, I determined the actual dollar  7 loss based on the percentages provided by the  8 plaintiffs.  9 THE VIDEOGRAPHER: Three minutes.  10 BY MR. LILLIENSTEIN:  11 <b>Q. With respect to the methods that your</b>  12 <b>staff uses to inquire about the degree of</b>  13 <b>impairment. Are there specific questions that</b>  14 <b>you've instructed them to ask?</b>  15 A. Yes.  16 <b>Q. What are those questions?</b>  17 A. Well, they're instructed to explain that  18 we look at loss of enjoyment of life regarding the  19 impact in a variety of areas, specifically those  20 that I spell out in the report, which have to do  21 with the -- any impact on the ability to obtain  22 value and satisfaction from career. And we know,  23 for example, for one of the gentleman, he had a  24 business opportunity loss, but to what extent did  25 this impact their ability to enjoy the satisfaction</p>	<p style="text-align: right;">137</p> <p>1 DEPOSITION OF STAN SMITH, Ph.D.  2 THE VIDEOGRAPHER: We're going off the  3 record at the end of Tape No. 3. The time is 12:26  4 p.m.  5 (Whereupon, there was an  6 intermission.)  7 THE VIDEOGRAPHER: We're back on the record  8 at the beginning of Tape No. 4. The time is 12:35  9 p.m.  10 BY MR. LILLIENSTEIN:  11 <b>Q. Dr. Smith, do you consider a reduction</b>  12 <b>in the value of a person's life to be distinct from</b>  13 <b>injury to a person's business?</b>  14 A. Yes.  15 <b>Q. Do you consider reduction in the value</b>  16 <b>of a person's life to be distinct from injury to a</b>  17 <b>person's property?</b>  18 A. Yes.  19 <b>Q. Is there any way to test whether the</b>  20 <b>plaintiffs' estimates of the degree of impairment is</b>  21 <b>accurate?</b>  22 MR. ALTMAN: Objection. Foundation.  23 BY THE WITNESS:  24 A. We're going back to the discussion we  25 had, which I think you referred to as a filibuster</p>

<p style="text-align: right;">138</p> <p>1 DEPOSITION OF STAN SMITH, Ph.D.  2 at one point in time. I just needed to give you a  3 complete answer as my oath requires. That the  4 plaintiffs are free to come into court, and I  5 believe, have the Constitutional right to state what  6 they have assessed their loss of quality of life to  7 be just as they have the freedom to come in and give  8 their best recollection as to the loss of hours and  9 any other facts that they believe are pertinent to  10 their claim so their trier of fact can be fully  11 informed as to all these important facts and  12 testimony of the plaintiffs.  13 And that my assignment was to take  14 the testimony of the plaintiffs and to put dollars  15 behind it. So there is no Daubert testing needed.  16 It's outside the scope. The plaintiffs will come in  17 and say, I felt cold, I felt warm, I felt cheated, I  18 felt loss of enjoyment of life. I believe I spent  19 60 hours or 600 hours. That's their Constitutional  20 right to state that. I know of no law in the land  21 that would exclude their testimony. My simple  22 assignment was to apply a mathematical model to  23 their testimony.  24 BY MR. LILLIENSTEIN:  25 <b>Q. And with respect to the mathematical</b></p>	<p style="text-align: right;">140</p> <p>1 DEPOSITION OF STAN SMITH, Ph.D.  2 research on the value of a statistical life.  3 The value of a statistical life is  4 something outside the ken of a jury, but which is  5 why they uniformly accept it as high-quality  6 literature in the field of economics. The  7 application of the percentage is fifth grade  8 mathematics.  9 <b>Q. Okay. So does any of the literature</b>  10 <b>that you've referred to in your report address in</b>  11 <b>any way the use of asking a plaintiff to estimate</b>  12 <b>the reduction in the quality of life?</b>  13 A. The literature pertains to applying the  14 percentage. It doesn't specify how that percentage  15 may be arrived at. And Mr. Chittur chooses to have  16 the jury apply a percentage that the plaintiffs will  17 tell them. It doesn't matter where the percentage  18 comes from in terms of the model. But application  19 of the model in this instance is to the jury's  20 statements. You may come in and say to the jury, we  21 want you to apply 1 percent. Then the model would  22 apply to your statements.  23 <b>Q. My question focused on literature. Are</b>  24 <b>you aware of any literature that addresses the use</b>  25 <b>of the interview technique that your staff uses to</b></p>
<p style="text-align: right;">139</p> <p>1 DEPOSITION OF STAN SMITH, Ph.D.  2 <b>model that you applied, one of the three factors</b>  3 <b>that you have to use is their estimate of the degree</b>  4 <b>of impairment?</b>  5 A. Not really. I can give the trier of  6 fact here's the value of life, here's the value per  7 year. They can do the fifth grade multiplication.  8 It's fifth grade multiplication. We learned when we  9 were 12 years old how to take 50 percent of a  10 number, that if someone earns \$1.75 or a \$1.80  11 selling apples and if Mary is going to earn 50  12 percent of the revenue, then Mary earns 90 cents.  13 We learned that in fifth grade.  14 I actually don't need the  15 percentage of the plaintiffs. I'm happy to give the  16 model to the jury and they can apply the  17 percentages. The application of the percentages is  18 the equivalent of adding two plus two. It's not  19 economics, it's mathematics.  20 The only economics here is what is  21 the value of a statistical life. That requires a  22 very significant amount of economic knowledge,  23 training and experience, and I have published peer-  24 reviewed articles on this topic and under a Nobel  25 laurate, Dr. Gary Becker, published original</p>	<p style="text-align: right;">141</p> <p>1 DEPOSITION OF STAN SMITH, Ph.D.  2 <b>determine the impairment rating?</b>  3 A. Well, I published a peer --  4 MR. ALTMAN: Hold on. Objection.  5 Misstates his testimony.  6 BY THE WITNESS:  7 A. I published a peer-reviewed journal  8 article on the use of percentage, but the peer-  9 reviewed literature has not seen the need to go into  10 the very simplistic issue of where the percentages  11 come from because that's an issue for a trial  12 attorney and the strategy of a trial attorney. So  13 we kind of don't write peer-reviewed journal  14 articles on how a trial attorney should produce  15 information to a jury.  16 BY MR. LILLIENSTEIN:  17 <b>Q. But you did produce a peer-reviewed</b>  18 <b>article that deals with that?</b>  19 A. That deals with the application of  20 percentages. Where the percentages come from is  21 really trial strategy. In this case, and in almost  22 every case, the civil trial value is for my model of  23 the value of life to be applied to the testimony of  24 the plaintiffs.  25 MR. LILLIENSTEIN: Jeremy, can you show</p>

<p style="text-align: right;">142</p> <p>1 DEPOSITION OF STAN SMITH, Ph.D.</p> <p>2 Dr. Smith AAA.</p> <p>3 MR. ALTMAN: Can you describe that for me?</p> <p>4 MR. LILLIENSTEIN: It's his CV.</p> <p>5 THE WITNESS: Exhibit AAA is my resumé.</p> <p>6 BY MR. LILLIENSTEIN:</p> <p>7 <b>Q. Can you identify on that resumé which</b></p> <p>8 <b>peer-reviewed literature you were just referring to?</b></p> <p>9 A. It's the top article on Page 3.</p> <p>10 <b>Q. "Hedonic damages and personal injury, a</b></p> <p>11 <b>conceptual approach." That the one you're referring</b></p> <p>12 <b>to?</b></p> <p>13 A. Yes. But there are other articles that</p> <p>14 also discuss the application, the simple fifth grade</p> <p>15 mathematical application of a percentage to the</p> <p>16 value of life statistics.</p> <p>17 <b>Q. Is that literature that you've written</b></p> <p>18 <b>or others?</b></p> <p>19 A. Others.</p> <p>20 <b>Q. Who?</b></p> <p>21 A. Ted Miller, for example. I cite several</p> <p>22 of his articles in my report on appendix.</p> <p>23 <b>Q. And you're saying that Ted Miller</b></p> <p>24 <b>addresses the use of the interview technique or just</b></p> <p>25 <b>the application of the results of that technique to</b></p>	<p style="text-align: right;">144</p> <p>1 DEPOSITION OF STAN SMITH, Ph.D.</p> <p>2 testimony and form.</p> <p>3 BY MR. LILLIENSTEIN:</p> <p>4 <b>Q. Are you aware of any such literature?</b></p> <p>5 A. Mr. Lillienstein, what is the rate of</p> <p>6 error when I asked you your name earlier and you</p> <p>7 told me it was Mr. Lillienstein? What is the rate</p> <p>8 of error in that answer? It's the same. It's the</p> <p>9 same rate of error as the answer the plaintiffs gave</p> <p>10 us. Zero, z-e-r-o. There is no literature that</p> <p>11 addresses a process that has no rate of error.</p> <p>12 <b>Q. So there is no literature. Thank you.</b></p> <p>13 A. No, there is no rate of error.</p> <p>14 MR. ALTMAN: Objection. Misstates his</p> <p>15 testimony.</p> <p>16 BY MR. LILLIENSTEIN:</p> <p>17 <b>Q. Who is Thomas Schelling?</b></p> <p>18 A. An economist who first proposed how to</p> <p>19 measure the intangible value of life about 50 years</p> <p>20 ago.</p> <p>21 <b>Q. Is he considered authoritative in the</b></p> <p>22 <b>field?</b></p> <p>23 A. You know, it's very difficult to say</p> <p>24 authoritative as a global. You'd have to tell me a</p> <p>25 statement.</p>
<p style="text-align: right;">143</p> <p>1 DEPOSITION OF STAN SMITH, Ph.D.</p> <p>2 <b>the value of life?</b></p> <p>3 MR. ALTMAN: Objection. Form and misstates</p> <p>4 his testimony.</p> <p>5 BY THE WITNESS:</p> <p>6 A. Discusses the application of a</p> <p>7 percentage.</p> <p>8 BY MR. LILLIENSTEIN:</p> <p>9 <b>Q. Okay. Do -- are you aware of any</b></p> <p>10 <b>literature that addresses the known or potential</b></p> <p>11 <b>rate of error in using the methodology that you use</b></p> <p>12 <b>to determine the degree of impairment?</b></p> <p>13 A. There is no rate of error.</p> <p>14 MR. ALTMAN: Objection. Misstates his</p> <p>15 testimony. Form.</p> <p>16 BY THE WITNESS:</p> <p>17 A. There is no rate of error. This is the</p> <p>18 testimony that the plaintiffs have indicated they</p> <p>19 will give. There is no rate of error. The rate of</p> <p>20 error is zero.</p> <p>21 BY MR. LILLIENSTEIN:</p> <p>22 <b>Q. You're not aware of any literature that</b></p> <p>23 <b>addresses that?</b></p> <p>24 A. There is no rate of error.</p> <p>25 MR. ALTMAN: Objection. Misstates his</p>	<p style="text-align: right;">145</p> <p>1 DEPOSITION OF STAN SMITH, Ph.D.</p> <p>2 <b>Q. Is he -- is his work generally accepted</b></p> <p>3 <b>as authoritative by economists?</b></p> <p>4 A. You have to cite a particular</p> <p>5 publication, and I am really unaware of all the</p> <p>6 fields that he's published.</p> <p>7 <b>Q. Would you say -- would you give me the</b></p> <p>8 <b>same answer if I asked the same question about you?</b></p> <p>9 A. I really don't engage in --</p> <p>10 MR. ALTMAN: Objection.</p> <p>11 BY THE WITNESS:</p> <p>12 A. I really don't engage in self-assessment</p> <p>13 except that I've published in peer-reviewed</p> <p>14 literature. So to that extent, opinions are</p> <p>15 accepted but beyond that.</p> <p>16 BY MR. LILLIENSTEIN:</p> <p>17 <b>Q. Some of your opinions have been</b></p> <p>18 <b>criticized in the literature, is that fair to say?</b></p> <p>19 A. Not by economists who have the</p> <p>20 credentials that typify an expert as having</p> <p>21 published in the field of the value of a statistical</p> <p>22 life, published original research.</p> <p>23 The only criticism comes from folks</p> <p>24 who don't have that hallmark of expertise of having</p> <p>25 published in the original published peer-reviewed</p>



<p style="text-align: right;">146</p> <p>1 DEPOSITION OF STAN SMITH, Ph.D.</p> <p>2 articles in the original research, people who are</p> <p>3 more Monday morning quarterbacks, paid business</p> <p>4 consultants, some have advanced degrees, some do</p> <p>5 not. But they don't have the credentials that</p> <p>6 typifies and is a hallmark of an expert in the field</p> <p>7 as having had their opinions in original research</p> <p>8 peer review. So the answer to that is no.</p> <p>9 <b>Q. Is W.K. Viscusi an economist whose work</b></p> <p>10 <b>is generally accepted as authoritative in the field?</b></p> <p>11 A. He's recognized as having made valuable</p> <p>12 contributions to the literature. I note that he's</p> <p>13 mentioned in your defense economic expert report.</p> <p>14 Curiously, the report fails to</p> <p>15 mention that Dr. Viscusi has testified on the value</p> <p>16 of life using this exact same process for plaintiffs</p> <p>17 and I have his sworn testimony indicating that this</p> <p>18 is exactly the value to use in a court of law when</p> <p>19 compensation is to be determined.</p> <p>20 <b>Q. Doctor Viscusi is also referred to in</b></p> <p>21 <b>your expert report, is he not?</b></p> <p>22 A. Some of his articles are, yes.</p> <p>23 <b>Q. Your report, as opposed to your</b></p> <p>24 <b>appendix, refers to three authors, one of them is</b></p> <p>25 <b>Viscusi?</b></p>	<p style="text-align: right;">148</p> <p>1 DEPOSITION OF STAN SMITH, Ph.D.</p> <p>2 and I have his testimony in that case, yes.</p> <p>3 <b>Q. Would you provide that to us?</b></p> <p>4 A. Not unless --</p> <p>5 MR. ALTMAN: Plaintiffs will take it under</p> <p>6 advisement after conferring with the witness whether</p> <p>7 this testimony can be exposed.</p> <p>8 BY MR. LILLIENSTEIN:</p> <p>9 <b>Q. What's the name of that case?</b></p> <p>10 A. I recall the name of the plaintiff,</p> <p>11 which was Hancofski.</p> <p>12 <b>Q. Can you spell that for me?</b></p> <p>13 A. Not from memory, no.</p> <p>14 <b>Q. Can you do it phonetically for me</b></p> <p>15 <b>though?</b></p> <p>16 A. I can just say it. You can do it</p> <p>17 phonetically. But Hancofski.</p> <p>18 <b>Q. And where was that case?</b></p> <p>19 A. Out West but I forget exactly where.</p> <p>20 California perhaps.</p> <p>21 <b>Q. And when did Dr. Viscusi give that</b></p> <p>22 <b>testimony?</b></p> <p>23 A. I can't recall exactly the timetable,</p> <p>24 but I believe somewhere from the mid- nineties to</p> <p>25 the early 2000, but I'm not exactly sure when in</p>
<p style="text-align: right;">147</p> <p>1 DEPOSITION OF STAN SMITH, Ph.D.</p> <p>2 A. The report includes the appendix.</p> <p>3 There's no distinction. The report consists of</p> <p>4 several sections, including summary tables,</p> <p>5 including detail tables, including appendix,</p> <p>6 including first pages, summary pages. The report is</p> <p>7 the report. You've marked it as an exhibit so you</p> <p>8 should not try to say it's -- well, I'm just saying</p> <p>9 it's incorrect to call parts of the report not the</p> <p>10 report.</p> <p>11 <b>Q. I didn't say that. Your report refers</b></p> <p>12 <b>to Viscusi as someone you relied on, true?</b></p> <p>13 A. No. I cite Viscusi as one of a number</p> <p>14 of people who published in the peer-reviewed</p> <p>15 literature on the value of a statistical life.</p> <p>16 I further tell you, although I</p> <p>17 didn't say it in the report, that Viscusi has</p> <p>18 undertaken in sworn testimony to do virtually the</p> <p>19 same exact thing I've done. He said he's done it</p> <p>20 for plaintiffs, he said he did it many times.</p> <p>21 <b>Q. Are you aware of the -- any of the cases</b></p> <p>22 <b>that you're referring to in which he has given</b></p> <p>23 <b>testimony?</b></p> <p>24 A. I was the defense witness in the case in</p> <p>25 which he testified for plaintiffs in one instance</p>	<p style="text-align: right;">149</p> <p>1 DEPOSITION OF STAN SMITH, Ph.D.</p> <p>2 that timetable.</p> <p>3 <b>Q. So it wouldn't be a case listed in the</b></p> <p>4 <b>cases in which you've given testimony during the</b></p> <p>5 <b>last four years?</b></p> <p>6 A. I was a defense expert but I did not</p> <p>7 testify, so it wouldn't be on my list ever.</p> <p>8 <b>Q. But in other words, it didn't take place</b></p> <p>9 <b>within the last four years?</b></p> <p>10 A. Even if it had, it wouldn't be on my</p> <p>11 list is my point.</p> <p>12 <b>Q. My point is, not your point, it's what I</b></p> <p>13 <b>want to ask.</b></p> <p>14 A. It is not on the list and it was before</p> <p>15 '05. I believe it was somewhere in the '95 to '05</p> <p>16 era.</p> <p>17 <b>Q. You also refer to T.R. Miller and a</b></p> <p>18 <b>study by Thaylor and Rosen; is that true?</b></p> <p>19 A. Yes.</p> <p>20 <b>Q. Do you believe that all of these</b></p> <p>21 <b>authors' works in the field were authoritative?</b></p> <p>22 A. You can't just say everything someone</p> <p>23 has written is authoritative. You really need to</p> <p>24 take it article by article, because even the best of</p> <p>25 authors may have written something that wasn't</p>

<p style="text-align: right;">150</p> <p>1 DEPOSITION OF STAN SMITH, Ph.D.  2 particularly well regarded.  3 <b>Q. Are they generally accepted as experts</b>  4 <b>in the field of economics?</b>  5 MR. ALTMAN: Objection. Foundation.  6 BY THE WITNESS:  7 A. I candidly doubt whether Sherwin Rosen,  8 who was chairman of the Department of Economics and  9 a member of my thesis committee, I candidly doubt if  10 he ever sought to qualify as an expert. It's  11 usually the top economists in the country, and I  12 don't mean any disrespect to people who are experts,  13 but typically the very top economists in the  14 country, people like Gary Becker, who was a Nobel  15 prize winner on my committee, people like Sherwin  16 Rosen, who was chairman of the department who  17 produced all the past Nobel prize winners in the  18 world, are somewhat above the profession of being  19 seeking to be hired as experts in courts of law.  20 They typically would prefer to consult to presidents  21 of the United States and other places.  22 BY MR. LILLIENSTEIN:  23 <b>Q. Does the work by T.R. Miller, "The</b>  24 <b>plausible range for the value of life," which</b>  25 <b>appeared in the Journal of Forensic Economics in</b></p>	<p style="text-align: right;">152</p> <p>1 DEPOSITION OF STAN SMITH, Ph.D.  2 BY THE WITNESS:  3 A. I know it was lengthy but could I have  4 my last answer read back because I believe I  5 answered the question, if not succinctly, yet did  6 answer it.  7 (Whereupon, the record was  8 read as requested.)  9 BY THE WITNESS:  10 A. All right. So just adding to that,  11 because I have not memorized it and I can't tell you  12 for certain, the answer is I don't know. But it  13 certainly is something that he easily could have  14 written since he's testified exactly to that.  15 BY MR. LILLIENSTEIN:  16 <b>Q. Would you give the same answer with</b>  17 <b>respect to the Viscusi work that you refer to at</b>  18 <b>Page 5 of your report for Lim?</b>  19 A. Well, I'm not sure which article --  20 <b>Q. The article --</b>  21 A. That's okay. Viscusi I don't think in  22 there has talked about application in litigation  23 where as Miller, I believe, would have. So Miller  24 is much more likely to have discussed the litigation  25 application along the lines of what I do. Viscusi I</p>
<p style="text-align: right;">151</p> <p>1 DEPOSITION OF STAN SMITH, Ph.D.  2 <b>fall of 1990, does that address the use of the value</b>  3 <b>of life methodology that you advocate in this case</b>  4 <b>to measure compensatory damages?</b>  5 MR. ALTMAN: Objection. Form.  6 BY THE WITNESS:  7 A. First of all, it's not what I advocate.  8 What I simply did was take a value of statistical  9 life and apply it. And Miller has testified that  10 that's a perfectly appropriate thing to do. I  11 haven't memorized his 1990 article or the updated  12 which you provided, I believe, several years back.  13 I think I can tell you the date of that, if you give  14 me a moment. In the year 2000. But whether it's  15 explicit in the article or not, Miller has testified  16 that what I do is exactly the right thing to do in a  17 court of law.  18 MR. LILLIENSTEIN: Move to strike as  19 nonresponsive.  20 BY MR. LILLIENSTEIN:  21 <b>Q. Does the article that I just referred to</b>  22 <b>address the use of your methodology as a means of</b>  23 <b>calculating compensatory damages in court?</b>  24 MR. ALTMAN: Objection. Form.  25</p>	<p style="text-align: right;">153</p> <p>1 DEPOSITION OF STAN SMITH, Ph.D.  2 don't believe did in that -- in the articles that I  3 cite. They were more original research in the value  4 of life.  5 <b>Q. And did the Richard Thaylor and Sherwin</b>  6 <b>Rosen's work, "The Value of Statistical Life,"</b>  7 <b>address the use of this methodology in court?</b>  8 A. They didn't address the value of a  9 particular person, they published research on the  10 value of a statistical life, as do most authors.  11 Most authors don't address the  12 issue of what I'll call the engineering application,  13 just as -- Einstein wrote about relativity, but he  14 didn't engineer the atomic bomb, and I don't think  15 any of his articles for which he won the Nobel prize  16 published in the early 20th Century mentioned the  17 application of relativity and its engineering  18 applications to apply to the construction of an  19 atomic bomb for practical purposes.  20 Most original research doesn't  21 specifically address the various applications;  22 sometimes yes, but often not.  23 <b>Q. Other than the works that you authored</b>  24 <b>or co-authored, which are listed in your report or</b>  25 <b>your appendix, do any of the authorities listed in</b></p>

<p style="text-align: right;">154</p> <p>1           <b>DEPOSITION OF STAN SMITH, Ph.D.</b>  2   <b>the appendix provide support for the use of value of</b>  3   <b>life methodology to measure compensatory damages in</b>  4   <b>court?</b>  5       A.   I would say probably all the articles  6   that are listed in the Journal of Forensic Economics  7   because that's a journal that's more concerned with  8   application as opposed to original research and  9   theory.  10   <b>Q.   Can you take a look at your -- one of</b>  11   <b>your appendices and tell me which articles you're</b>  12   <b>referring to?</b>  13       A.   Anything that would be published in the  14   Journal of Forensic Economics. Also Miller's  15   Northwestern University law review article would  16   also give detail as to the application in court.  17       <b>Q.   Are you familiar with the 2000 article</b>  18   <b>that is published by Viscusi in the Journal of</b>  19   <b>Forensic Economics entitled "Misuses and Proper Uses</b>  20   <b>of Hedonic Values of Life in Legal Contexts"?</b>  21       A.   Yes.  22       MR. ALTMAN: Objection. Foundation.  23   BY THE WITNESS:  24       A.   Somewhat familiar. It's been a while  25   since I've read it but generally familiar with it.</p>	<p style="text-align: right;">156</p> <p>1           DEPOSITION OF STAN SMITH, Ph.D.  2   you use."  3           And he did actually in sworn  4   testimony, in cases where he was retained by  5   plaintiffs subsequent to that public statement at  6   the annual meeting of the American Economic  7   Association in 1990. He did give the jury the  8   numbers I use.  9           Actually, he gave the jury higher  10   numbers than I use because Viscusi based his figures  11   on his research and I base my figures on a broad  12   range of research and then discount those averages  13   by 25 percent. So my numbers are about -- Viscusi's  14   numbers that he testified to would be about 25  15   percent higher than the numbers I would use.  16       <b>Q.   So your understanding of what Viscusi</b>  17   <b>said at this annual meeting of the American</b>  18   <b>Economics Association is based on what someone told</b>  19   <b>you he said?</b>  20       A.   Well, also --  21       MR. ALTMAN: Objection. Misstates his  22   testimony.  23   BY THE WITNESS:  24       A.   Well, it's memorialized in writing by --  25   </p>
<p style="text-align: right;">155</p> <p>1           DEPOSITION OF STAN SMITH, Ph.D.  2   BY MR. LILLIENSTEIN:  3       <b>Q.   Is it fair to say that Viscusi</b>  4   <b>criticized the methodology that you use in that</b>  5   <b>article?</b>  6       A.   No. Viscusi's principal -- Viscusi's  7   point is more political. Viscusi does not believe  8   that juries should be awarding for loss of enjoyment  9   of life. He comes to that position from a policy  10   point of view.  11           When asked in a public forum,  12   namely, the annual meeting of the American Economic  13   Association in I believe 1990, when asked in a  14   public forum that if he could -- if he knew that  15   juries were to award for the loss of enjoyment of  16   life, despite the fact that he does not believe that  17   element should be available to claimants in courts  18   of law, that if juries were yet charged with  19   awarding for the loss of enjoyment of life, asked  20   how he would approach it he said in public forum --  21   which I have actually a signed statement by the then  22   president of the National Association of Forensic  23   Economics who was attending at that meeting --  24   Viscusi said, and I'm more or less quoting, "Well,  25   then, Stan, I would give the jury the numbers that</p>	<p style="text-align: right;">157</p> <p>1           DEPOSITION OF STAN SMITH, Ph.D.  2   BY MR. LILLIENSTEIN:  3       <b>Q.   Just answer my question.</b>  4       A.   I will.  5       MR. ALTMAN: Hold on. Let him give you his  6   answer first and if you have an objection, you can  7   make it.  8   BY THE WITNESS:  9       A.   It is memorialized in writing by a  10   signed statement by the then president of the  11   National Association of Forensic Economics who was  12   at the meeting. But my knowledge about it is  13   actually firsthand because I was at the podium with  14   Kip Viscusi and I'm the one who asked the question  15   and I'm the one that he directed the answer to. So  16   my knowledge is both firsthand and corroborated by  17   the then president of the National Association of  18   Forensic Economics at that time. And I doubt that  19   anybody would dispute this discussion of events and  20   Viscusi himself, I have no reason to believe, would  21   ever deny this.  22           He simply does not believe the  23   claimants should have the right to claim loss of  24   enjoyment of life as a compensatory loss in court  25   cases where they've sustained loss of enjoyment of</p>

<p style="text-align: right;">158</p> <p>1 DEPOSITION OF STAN SMITH, Ph.D.  2 life. And he arrives at that position from a policy  3 point of view.  4 BY MR. LILLIENSTEIN:  5 <b>Q. You cited a 1990 article by Viscusi that</b>  6 <b>was published in the Journal of Forensic Economics.</b>  7 <b>Isn't it true in that article Viscusi wrote that "It</b>  8 <b>makes no more sense to utilize a uniform value of</b>  9 <b>life figure for all people than it does to assume</b>  10 <b>that economic damages are the same for every</b>  11 <b>wrongful death act"?</b>  12 A. I agree with him. I don't use a uniform  13 value of life for all people. I don't know of  14 anybody who would disagree with that statement.  15 <b>Q. Isn't it true that the United States</b>  16 <b>government has not advocated the use of value of</b>  17 <b>life concepts in connection with a measurement of</b>  18 <b>compensatory damages?</b>  19 MR. ALTMAN: Objection. Foundation.  20 BY THE WITNESS:  21 A. Look, the United States government is  22 not a single voice. The United States government  23 uses this methodology absolutely extensively and  24 exclusively for the purposes of -- in the executive  25 branch. The office of management of the budget --</p>	<p style="text-align: right;">160</p> <p>1 DEPOSITION OF STAN SMITH, Ph.D.  2 And in those many, probably  3 hundreds of billions of dollars that have been  4 expended as a result of such regulations and  5 legislation over the course of years, not one  6 federal court has ever seen fit to overturn a  7 regulation or to stay a regulation imposed by an  8 agency based on this value of life literature. Not  9 one single court has ever said this -- and all that  10 regulation is used, that's imposed, has to, by law,  11 by the presidential executive order, evaluate the  12 cost per life saved as a result of those  13 regulations.  14 That's a uniformly accepted  15 methodology throughout the entire executive branch  16 in the United States. Not one federal court judge  17 ever has said about any regulation, which has been  18 the subject of litigation, that that regulation  19 should be overturned or not imposed as a result of  20 the deficiency or the inadequacy of the value of  21 life methodology that arrives at a cost per life  22 saved. Never in the history of the United States  23 has that ever happened.  24 So I guess you could say the  25 government has spoken with a voice that says this</p>
<p style="text-align: right;">159</p> <p>1 DEPOSITION OF STAN SMITH, Ph.D.  2 let me backtrack.  3 The -- every president since  4 President Carter, who was originally the first cost  5 benefit guy we had in the White House, has signed a  6 presidential executive order that requires that the  7 value of life be measured in all significant  8 legislation and regulation that is administered by  9 the executive branch.  10 So just imagine if you take the  11 combined administration of legislation and  12 regulation by, you know, the Federal Aviation  13 Association, the National Highway Safety  14 Transportation Agency, by Occupational Safety Health  15 Administration, by the Environmental Protection  16 Agency, agency after agency after agency, just  17 imagine the tens and tens and tens of billions and  18 billions of dollars that are expended to comply with  19 regulation, just imagine the vast, vast, vast  20 regulatory apparatus regarding the preservation of  21 health and safety in this country from baby cribs to  22 golf balls to golf clubs. It's hard to imagine  23 anything that isn't impacted by some regulation that  24 has an impact for risk reduction and preservation of  25 health and safety.</p>	<p style="text-align: right;">161</p> <p>1 DEPOSITION OF STAN SMITH, Ph.D.  2 methodology is the value to be used when impacting  3 the life of every single American through the vast  4 regulatory body and apparatus of the United States.  5 Now, the federal government does  6 not advocate what should go into court any more than  7 it advocates what should go into a Chrysler car.  8 BY MR. LILLIENSTEIN:  9 <b>Q. Are you done?</b>  10 A. Yes.  11 <b>Q. Okay. It's very long and impressive</b>  12 <b>answer. And of course I have no quarrel with</b>  13 <b>anything that you just said, but what you just said</b>  14 <b>has nothing to do with the question I asked, which</b>  15 <b>is whether or not the government advocates the use</b>  16 <b>of this methodology for the calculation of</b>  17 <b>compensatory damages in court. All of what you just</b>  18 <b>said had to do with dealing with regulatory work;</b>  19 <b>isn't that true?</b>  20 A. If I could have my -- my answer read,  21 just the last sentence of my answer read back just  22 to refresh my memory.  23 (Whereupon, the record was  24 read as requested.)  25 BY THE WITNESS:</p>

<p style="text-align: right;">162</p> <p>1 DEPOSITION OF STAN SMITH, Ph.D.</p> <p>2 A. I might have put you to sleep before I</p> <p>3 got to that sentence.</p> <p>4 BY MR. LILLIENSTEIN:</p> <p>5 <b>Q. You believe that that sentence answers</b></p> <p>6 <b>my question?</b></p> <p>7 A. I think so, yes. What's missing?</p> <p>8 <b>Q. So when Viscusi writes in his 2000</b></p> <p>9 <b>article in the Journal of Forensic Economics</b></p> <p>10 <b>addressing cases in which plaintiff sought to</b></p> <p>11 <b>introduce evidence of hedonic damages in wrongful</b></p> <p>12 <b>death cases against the government, he writes: "In</b></p> <p>13 <b>some instances, plaintiff's expert attempted to</b></p> <p>14 <b>introduce the hedonic damages approach; however, in</b></p> <p>15 <b>every instance the government opposed this</b></p> <p>16 <b>methodology and instead chose to base damages on</b></p> <p>17 <b>conventional measures such as the present value of</b></p> <p>18 <b>lost earnings. It is consequently incorrect to</b></p> <p>19 <b>state, as some hedonic damages have done, that the</b></p> <p>20 <b>adopting of hedonic damages values simply follows</b></p> <p>21 <b>government practice. The government's use of these</b></p> <p>22 <b>values is quite specific and not for purposes of</b></p> <p>23 <b>setting compensation levels."</b></p> <p>24 <b>Do you disagree with that</b></p> <p>25 <b>statement?</b></p>	<p style="text-align: right;">164</p> <p>1 DEPOSITION OF STAN SMITH, Ph.D.</p> <p>2 sometimes said you shouldn't do this in a court of</p> <p>3 law but then also testified in a court of law and</p> <p>4 now writes that the government did X, Y and Z, it</p> <p>5 might be best to actually read a specific case</p> <p>6 rather than leap to the conclusion that Viscusi</p> <p>7 accurately portrayed or characterized what happened</p> <p>8 in a court of law.</p> <p>9 We certainly know what happened</p> <p>10 when the government said let's avoid lawsuits in the</p> <p>11 victim compensation fund. Let's allow all 3,800</p> <p>12 plaintiffs come into the fund and claim hedonic</p> <p>13 damages directly without the need to go to court.</p> <p>14 <b>Q. With respect to your opinions on the</b></p> <p>15 <b>loss of credit expectancy for Long Lim, Gordon</b></p> <p>16 <b>Redner, Justin Russ and Melinda Serin, is it true</b></p> <p>17 <b>you've given an opinion as to that item of loss for</b></p> <p>18 <b>those four plaintiffs?</b></p> <p>19 A. Yes.</p> <p>20 <b>Q. And for Thomas Smith you didn't render</b></p> <p>21 <b>an opinion regarding loss of credit expectancy. In</b></p> <p>22 <b>that case you've given an opinion as to an element</b></p> <p>23 <b>of damage called additional cost of mortgage?</b></p> <p>24 A. Yes.</p> <p>25 <b>Q. Is it fair to say in each case other</b></p>
<p style="text-align: right;">163</p> <p>1 DEPOSITION OF STAN SMITH, Ph.D.</p> <p>2 A. I need to see a case, but I will tell</p> <p>3 you this: He's not talking about the U.S.</p> <p>4 government. He's talking about the -- a defendant,</p> <p>5 perhaps. So when he says "the government," do you</p> <p>6 know what defendant he's talking about?</p> <p>7 <b>Q. Yes. The federal government.</b></p> <p>8 A. No. The federal government is never a</p> <p>9 defendant. There is an agency or branch of the</p> <p>10 federal government who is a defendant, unless it's</p> <p>11 in a -- somebody suing the United States of America,</p> <p>12 which is rare event.</p> <p>13 But I will tell you this: When the</p> <p>14 Senate authored and passed the Victim Compensation</p> <p>15 Act or the Airline Stabilization Act after 911, the</p> <p>16 word "hedonic damages," the term which I coined, was</p> <p>17 specifically codified and written into the numerous</p> <p>18 elements of damage that were allowed to be recovered</p> <p>19 by plaintiffs seeking recovery from the 911 Victims</p> <p>20 Compensation Fund. So there you have the government</p> <p>21 specifically advocating the recovery of damages for</p> <p>22 victims of the 911 Terrorist Act.</p> <p>23 As the Viscusi statement, it would</p> <p>24 be -- since we know that Viscusi has sometimes said</p> <p>25 one thing and sometimes said another thing,</p>	<p style="text-align: right;">165</p> <p>1 DEPOSITION OF STAN SMITH, Ph.D.</p> <p>2 <b>than Thomas Smith, your opinion as to the amount of</b></p> <p>3 <b>loss of credit expectancy is unrelated to the actual</b></p> <p>4 <b>loss in the form of additional interest paid as a</b></p> <p>5 <b>result of damage to credit?</b></p> <p>6 MR. ALTMAN: Objection. Foundation.</p> <p>7 BY THE WITNESS:</p> <p>8 A. I can't say that but it's in the form of</p> <p>9 opportunity loss, which is a well understood loss in</p> <p>10 the field of economics.</p> <p>11 BY MR. LILLIENSTEIN:</p> <p>12 <b>Q. Why can't you answer my question?</b></p> <p>13 A. Because there may be additional out</p> <p>14 of -- there may be additional credit costs that I am</p> <p>15 unaware of. The --</p> <p>16 <b>Q. I only asked you about what your opinion</b></p> <p>17 <b>says. And the question is, is your opinion as to</b></p> <p>18 <b>the amount of loss of credit expectancy unrelated to</b></p> <p>19 <b>actual loss in the form of additional interest paid?</b></p> <p>20 A. It doesn't include actual loss, yes,</p> <p>21 you're right, in the form of additional interest</p> <p>22 paid. There might be such additional loss but I</p> <p>23 haven't calculated that.</p> <p>24 <b>Q. Okay. Your opinions and your report</b></p> <p>25 <b>referred to additional credit capacity, correct?</b></p>



<p style="text-align: right;">166</p> <p>1           <b>DEPOSITION OF STAN SMITH, Ph.D.</b></p> <p>2           A.   Yes.</p> <p>3           <b>Q.   Is your opinion of the element of damage</b></p> <p>4           <b>called loss of credit expectancy based on analysis</b></p> <p>5           <b>of what each plaintiff would have incurred if each</b></p> <p>6           <b>of them attempted to borrow up to the limit of what</b></p> <p>7           <b>you characterized as their additional credit</b></p> <p>8           <b>capacity?</b></p> <p>9           MR. ALTMAN: Objection. Form.</p> <p>10          BY THE WITNESS:</p> <p>11          A.   My loss is calculated on a method for</p> <p>12          estimating the value of the option if they'd</p> <p>13          exercised it to borrow up to that. It's not all --</p> <p>14          my analogy, it's -- imagine somebody who's given a</p> <p>15          raffle ticket. That raffle ticket can -- is</p> <p>16          actually an opportunity to get something. It's not</p> <p>17          certain but there is some opportunity or say an</p> <p>18          option where there's an opportunity to do something,</p> <p>19          so it's putting a value on that option.</p> <p>20          When a fellow was on the trapeze</p> <p>21          doing a trapeze act on the high wire in the circus,</p> <p>22          there's a net below him. And a fellow might go his</p> <p>23          entire career working at Cirque du Soleil or other</p> <p>24          circuses and never actually fall or use that net.</p> <p>25          But none of those people on the high wire would ever</p>	<p style="text-align: right;">168</p> <p>1           <b>DEPOSITION OF STAN SMITH, Ph.D.</b></p> <p>2           <b>didn't use their credit availability, they still</b></p> <p>3           <b>suffer damages as far as you're concerned?</b></p> <p>4           A.   If somebody takes the air bags out of</p> <p>5           your car, the fact that you may drive for five years</p> <p>6           with no accidents, would you claim that you've</p> <p>7           suffered no damages even if all your air bags are</p> <p>8           missing, some thief steals them? You go to court</p> <p>9           and say "No, let the guy go. I haven't had an</p> <p>10          accident for five years. That theft didn't affect</p> <p>11          me at all. I don't care dropping charges." I doubt</p> <p>12          you would do that.</p> <p>13          <b>Q.   Use your example. What would be the</b></p> <p>14          <b>value of the loss in that case with the air bags?</b></p> <p>15          A.   The value of the bags. If someone took</p> <p>16          your air bags away, aren't you entitled to new air</p> <p>17          bags whether you would ever use them or not? Don't</p> <p>18          you depend on them in the eventuality? Wouldn't you</p> <p>19          like them to be there for your passengers, for your</p> <p>20          children, for your friends, family, relatives,</p> <p>21          colleagues? God forbid you should ever drive a</p> <p>22          federal judge around in your car, wouldn't that</p> <p>23          federal judge want to know there's an air bag there?</p> <p>24          <b>Q.   And you're equating the cost of a</b></p> <p>25          <b>tangible thing to the value of an intangible thing</b></p>
<p style="text-align: right;">167</p> <p>1           DEPOSITION OF STAN SMITH, Ph.D.</p> <p>2           tell you that they place no value on that net; in</p> <p>3           fact, they place considerable value on the net and</p> <p>4           they might not even engage in their career if there</p> <p>5           were no net.</p> <p>6           So credit expectancy is a valuable</p> <p>7           opportunity and I have attempted to value that</p> <p>8           opportunity in the methodology set forth in the</p> <p>9           paper.</p> <p>10          BY MR. LILLIENSTEIN:</p> <p>11          <b>Q.   And if the trapeze artist did that</b></p> <p>12          <b>performance and did not fall, did not need the net,</b></p> <p>13          <b>would that person be entitled to recover for the</b></p> <p>14          <b>loss of the safety net?</b></p> <p>15          A.   No. It's the other way around. If the</p> <p>16          guy didn't need the net, he couldn't take the net</p> <p>17          back and tell the agency that supplied it to him or</p> <p>18          rented it to him for that performance that he wants</p> <p>19          his money back because he didn't use the net. That</p> <p>20          net had value. And if he tried to claim that it had</p> <p>21          no value, the agency that rented the net to the</p> <p>22          Cirque du Soleil for that performance would tell him</p> <p>23          to go jump in the lake; otherwise, why would he have</p> <p>24          rented the net, even if he didn't fall.</p> <p>25          <b>Q.   And if the plaintiffs in this case</b></p>	<p style="text-align: right;">169</p> <p>1           <b>DEPOSITION OF STAN SMITH, Ph.D.</b></p> <p>2           <b>such as credit expectancy?</b></p> <p>3           A.   No. The value --</p> <p>4           MR. ALTMAN: Objection. Misstates his</p> <p>5           testimony.</p> <p>6           BY THE WITNESS:</p> <p>7           A.   The value of the air bag is not that</p> <p>8           it's tangible, the value of the air bag is that it</p> <p>9           reduces your risk of death.</p> <p>10          BY MR. LILLIENSTEIN:</p> <p>11          <b>Q.   You just said the value of the loss in</b></p> <p>12          <b>the example you gave would be the cost of the air</b></p> <p>13          <b>bag.</b></p> <p>14          A.   That's right. That's the cost of</p> <p>15          reducing your risk of death.</p> <p>16          <b>Q.   Okay. Now, each of your opinions</b></p> <p>17          <b>addresses the loss of the ability to borrow on</b></p> <p>18          <b>favorable terms whether or not the plaintiff</b></p> <p>19          <b>actually attempted to borrow on favorable terms and</b></p> <p>20          <b>was unable to do so, correct?</b></p> <p>21          A.   We know it happened actually. Certainly</p> <p>22          in the instance where the check cashing -- where the</p> <p>23          landlord of the locations of the check cashing</p> <p>24          agency refused to extend the lease, which is a form</p> <p>25          of borrowing.</p>

<p style="text-align: right;">170</p> <p>1 DEPOSITION OF STAN SMITH, Ph.D.</p> <p>2 <b>Q. Is that the only case in which it</b></p> <p>3 <b>actually happened which you are aware of?</b></p> <p>4 MR. ALTMAN: Objection. Form and</p> <p>5 foundation.</p> <p>6 BY THE WITNESS:</p> <p>7 A. I'm going to have to read through all of</p> <p>8 the work notes because I haven't memorized all these</p> <p>9 circumstances.</p> <p>10 BY MR. LILLIENSTEIN:</p> <p>11 <b>Q. I'll save you some time. I think Thomas</b></p> <p>12 <b>Smith is the case where you actually gave an opinion</b></p> <p>13 <b>as to the element of additional cost of a mortgage.</b></p> <p>14 <b>Are there any others?</b></p> <p>15 A. Well, I appreciate you haven't memorized</p> <p>16 my work notes any more than I have, but the answer</p> <p>17 is yes.</p> <p>18 <b>Q. What are they?</b></p> <p>19 A. In Mr. Lim's interview testimony, he</p> <p>20 indicated that Mr. Lim attempted to refinance his</p> <p>21 house but was turned down.</p> <p>22 Do you realize the impact that your</p> <p>23 clients have had on these claimants? I don't</p> <p>24 think -- you see this as a lawsuit but you don't</p> <p>25 appreciate the extraordinary loss of enjoyment of</p>	<p style="text-align: right;">172</p> <p>1 <b>DEPOSITION OF STAN SMITH, Ph.D.</b></p> <p>2 <b>statement just now is based on absolutely nothing.</b></p> <p>3 A. We'll see what the jury decides.</p> <p>4 MR. ALTMAN: Hold on. Hold on. Objection.</p> <p>5 Misstates his testimony and foundation.</p> <p>6 BY MR. LILLIENSTEIN:</p> <p>7 <b>Q. My question before that elicited your</b></p> <p>8 <b>impassioned statement is whether your opinion as to</b></p> <p>9 <b>loss of credit expectancy had anything to do with</b></p> <p>10 <b>actual loss?</b></p> <p>11 A. And the answer I gave you was that</p> <p>12 Mr. Lim testified specifically that he, in addition</p> <p>13 to the instances that you itemize, also Mr. Lim was</p> <p>14 turned down for credit attempting to refinance his</p> <p>15 house. He also -- I am not finished, sir.</p> <p>16 He also applied for two credit</p> <p>17 cards and was denied for both of them. Mr. Lim</p> <p>18 reported he never had any credit issues in the past.</p> <p>19 <b>Q. And isn't it true that your opinion as</b></p> <p>20 <b>to his loss of credit expectancy has nothing</b></p> <p>21 <b>whatsoever to do with any of those facts?</b></p> <p>22 MR. ALTMAN: Objection. Misstates his</p> <p>23 testimony.</p> <p>24 BY THE WITNESS:</p> <p>25 A. Those facts are in fact the basis for</p>
<p style="text-align: right;">171</p> <p>1 DEPOSITION OF STAN SMITH, Ph.D.</p> <p>2 life, the emotional impact, the offers of extortion,</p> <p>3 the fact that your clients offered to pollute the</p> <p>4 entire financial system of this country by supplying</p> <p>5 false information. You have no idea what your</p> <p>6 clients did. I don't think you have any</p> <p>7 appreciation for that whatsoever. And the fact that</p> <p>8 you -- even the fact --</p> <p>9 <b>Q. Neither do you, Dr. Smith, do you?</b></p> <p>10 A. Yes, I do. I do. In fact if you read</p> <p>11 my --</p> <p>12 MR. ALTMAN: Hold on. Hold on. Hold on.</p> <p>13 BY MR. LILLIENSTEIN:</p> <p>14 <b>Q. You accepted as true everything that the</b></p> <p>15 <b>plaintiffs have told you, haven't you, in making</b></p> <p>16 <b>this impassioned statement? You don't know whether</b></p> <p>17 <b>that's true or not.</b></p> <p>18 A. Are you denying your clients offered to</p> <p>19 pollute the credit system with false information by</p> <p>20 extorting from these clients?</p> <p>21 <b>Q. What knowledge do you have of that,</b></p> <p>22 <b>Dr. Smith, other than the telephone interview and</b></p> <p>23 <b>what the plaintiffs' attorney has told you?</b></p> <p>24 A. That knowledge.</p> <p>25 <b>Q. That's it, right? So your impassioned</b></p>	<p style="text-align: right;">173</p> <p>1 DEPOSITION OF STAN SMITH, Ph.D.</p> <p>2 which Mr. Lim is claiming loss of credit expectancy.</p> <p>3 BY MR. LILLIENSTEIN:</p> <p>4 <b>Q. Is that the basis on which you've given</b></p> <p>5 <b>an opinion as to his loss of credit expectancy?</b></p> <p>6 A. My measurement process, I also explained</p> <p>7 to you, is in the report. But Mr. Lim's statement,</p> <p>8 those facts are the statement for Mr. Lim's claim</p> <p>9 and his --</p> <p>10 <b>Q. Your opinion is what I'm asking you</b></p> <p>11 <b>about. And your opinion makes no effort to tie</b></p> <p>12 <b>those actual losses, those claimed actual losses to</b></p> <p>13 <b>his loss of credit expectancy, does it?</b></p> <p>14 A. On the contrary --</p> <p>15 MR. ALTMAN: Hold on. Objection. Form and</p> <p>16 foundation.</p> <p>17 BY THE WITNESS:</p> <p>18 A. On the contrary, my report contains --</p> <p>19 my work notes contain those statements, my report</p> <p>20 refers to the interview of Mr. Lim. Those are</p> <p>21 factual according to Mr. Lim. That's part of the</p> <p>22 factual basis that proves that he's had a loss of</p> <p>23 credit expectancy and my report provides a dollar</p> <p>24 value of that loss.</p> <p>25</p>

<p style="text-align: right;">174</p> <p>1 DEPOSITION OF STAN SMITH, Ph.D.  2 BY MR. LILLIENSTEIN:  3 <b>Q. The dollar value that you've given is</b>  4 <b>not tied at all to those actual losses that he</b>  5 <b>claims he sustained, isn't that fair to say?</b>  6 A. Those actual --  7 MR. ALTMAN: Objection. Asked and  8 answered. Hold on. Objection. Asked and answered  9 and misstates his testimony.  10 BY THE WITNESS:  11 A. Those statements by Mr. Lim formed the  12 factual basis for which he believes he has loss of  13 credit expectancy, and my analysis puts a dollar  14 value on the loss of credit expectancy. It isn't  15 specifically related to each and every instance, but  16 it relates to all the loss of opportunity and  17 expectancy that includes those specific issues.  18 BY MR. LILLIENSTEIN:  19 <b>Q. What amount of your opinion as to</b>  20 <b>Mr. Lim's loss of credit expectancy is related to</b>  21 <b>his alleged attempt to refinance his mortgage in</b>  22 <b>2005?</b>  23 A. My opinion relates to all of his loss of  24 credit expectancy. It's not related to each  25 specific item but all his loss of credit expectancy.</p>	<p style="text-align: right;">176</p> <p>1 DEPOSITION OF STAN SMITH, Ph.D.  2 BY MR. LILLIENSTEIN:  3 <b>Q. Mr. Lim told your staff that he does not</b>  4 <b>recall how much he would have saved on his mortgage;</b>  5 <b>isn't that true?</b>  6 MR. ALTMAN: Objection. Foundation.  7 BY THE WITNESS:  8 A. I haven't estimated a loss of mortgage  9 for him.  10 BY MR. LILLIENSTEIN:  11 <b>Q. That's my point. You never saw any</b>  12 <b>mortgage documents or application that he claims</b>  13 <b>that he made?</b>  14 A. As I said earlier, we don't ask for  15 documentation. All I want to know is what he will  16 be testifying to in the court. The foundation is  17 something you could ask him for.  18 <b>Q. And you never saw any documents</b>  19 <b>indicating that his attempt to refinance was</b>  20 <b>rejected?</b>  21 A. Well, same answer.  22 <b>Q. In forming your opinion as to loss of</b>  23 <b>credit expectancy, would it have been helpful to</b>  24 <b>know how much Mr. Lim's credit score declined as a</b>  25 <b>result of anything that Northern Leasing did?</b></p>
<p style="text-align: right;">175</p> <p>1 DEPOSITION OF STAN SMITH, Ph.D.  2 It's a bit like saying, well, a 1999 Chevrolet cost  3 10,000. How much did the steering wheel cost? How  4 much did the radio cost? I don't break it down. I  5 can tell you the market value of the car. I don't  6 have a way of parsing out specifically the cost of  7 the steering wheel or the windshield or the  8 headlights.  9 MR. ALTMAN: I want to point out there's  10 about seven minutes left in the scheduled time for  11 the examination. I'm not saying you don't get  12 additional time. I know Dr. Smith has additional  13 commitments that he needs to meet.  14 THE WITNESS: How much time is left on the  15 tape?  16 THE VIDEOGRAPHER: 11 minutes.  17 THE WITNESS: We can go the 11 minutes on  18 the tape. We can finish up on the tape.  19 Is that okay with you, Keith?  20 MR. ALTMAN: I'm totally fine with it if  21 that's okay with you, Dr. Smith.  22 THE WITNESS: I think we'll finish up this  23 tape and you and Mr. Lillienstein can make whatever  24 arrangements are suitable for a continuation if  25 that's needed.</p>	<p style="text-align: right;">177</p> <p>1 <b>DEPOSITION OF STAN SMITH, Ph.D.</b>  2 A. I don't know that information. I don't  3 have that information.  4 <b>Q. Would it have been helpful?</b>  5 A. I can't say without knowing what it  6 would have said.  7 <b>Q. But you don't know how much it declined,</b>  8 <b>if at all, do you?</b>  9 A. Well, I can tell you --  10 MR. ALTMAN: Objection. Misstates his  11 testimony.  12 BY THE WITNESS:  13 A. I can tell you that is based on my many  14 years of experience in analyzing credit damage and  15 routine credit reports, that when you have this type  16 of derogatory information --  17 THE VIDEOGRAPHER: I can't hear you at all.  18 Something you're doing with the wire there. Okay.  19 Can you repeat your answer.  20 BY THE WITNESS:  21 A. I'll continue it if I can. Can we have  22 the court reporter read the first part?  23 (Whereupon, the record was  24 read as requested.)  25</p>

<p style="text-align: right;">178</p> <p>1 DEPOSITION OF STAN SMITH, Ph.D.  2 BY THE WITNESS:  3 A. -- and lawsuits against you pursuing  4 claims on your credit record. It would be  5 unthinkable to believe it wouldn't have a  6 significant impact on your credit score. I know of  7 no one in the credit analysis business who would  8 testify that the impact on the score would be  9 anywhere from zero to insignificant and nothing more  10 than that.  11 BY MR. LILLIENSTEIN:  12 <b>Q. You are aware of no increased cost of</b>  13 <b>borrowing that Mr. Lim actually incurred as a result</b>  14 <b>of damage to his credit, correct?</b>  15 MR. ALTMAN: Objection. Foundation.  16 Misstates his testimony.  17 BY THE WITNESS:  18 A. There often is no increased costs of  19 borrowing when someone has lost their credit  20 expectancy. There is the loss of opportunity to  21 borrow. I'm not specifically aware of any  22 incremental cost.  23 Here is the point. If he had been  24 able -- if his credit score were not so drastically  25 impacted as to yet qualify him for a loan, it's</p>	<p style="text-align: right;">180</p> <p>1 DEPOSITION OF STAN SMITH, Ph.D.  2 BY MR. LILLIENSTEIN:  3 <b>Q. Yes.</b>  4 A. Long time ago in this deposition we  5 talked about what I accepted as true and what I  6 accepted as a statement that I portrayed, so I don't  7 know that we need to revisit that whole colloquy.  8 <b>Q. Please do because I just asked you a</b>  9 <b>specific question.</b>  10 A. Okay. I said before that the statements  11 of the plaintiffs I've been asked -- that I inquired  12 about and obtained through the interviews that were  13 made at my direction, I've been asked to take the  14 understanding that these will be repeated as sworn  15 testimony at trial and to put a dollar figure,  16 estimate of losses based on the fact testimony of  17 the plaintiffs. So I've assumed that -- I've  18 accepted these as what will be restated at trial.  19 <b>Q. So when you just stated that Mr. Lim's</b>  20 <b>credit expectancy went down to zero as a result of</b>  21 <b>what took place, you are accepting the truth of what</b>  22 <b>Mr. Lim told your staff?</b>  23 A. I didn't say his credit expectancy went  24 down to zero. I said it was reduced as a result of  25 these highly negative circumstances that appeared in</p>
<p style="text-align: right;">179</p> <p>1 DEPOSITION OF STAN SMITH, Ph.D.  2 almost certain it would have been at a higher rate  3 than would have been otherwise.  4 BY MR. LILLIENSTEIN:  5 <b>Q. Move to strike that as nonresponsive.</b>  6 <b>So you are aware of no actual</b>  7 <b>increased costs that he incurred?</b>  8 A. Yes --  9 MR. ALTMAN: Objection. Misstates his  10 testimony.  11 BY THE WITNESS:  12 A. The cost of borrowing for Mr. Lim went  13 to infinity. They refused to provide credit. That  14 means the effective rate was infinite. It  15 skyrocketed to an undefined infinite number.  16 BY MR. LILLIENSTEIN:  17 <b>Q. And you are assuming that because you're</b>  18 <b>accepting what he's told your staff?</b>  19 A. That's the cost of credit when you're  20 denied credit, it's an infinite cost.  21 <b>Q. Are you assuming that to be true?</b>  22 MR. ALTMAN: Objection. Foundation and  23 form.  24 BY THE WITNESS:  25 A. About his credit denials?</p>	<p style="text-align: right;">181</p> <p>1 DEPOSITION OF STAN SMITH, Ph.D.  2 his credit report.  3 THE VIDEOGRAPHER: Counsel, we have about  4 four minutes left on the tape.  5 BY MR. LILLIENSTEIN:  6 <b>Q. How did you determine each plaintiff's</b>  7 <b>ability to borrow?</b>  8 A. Ability to borrow is generally related  9 to income. And that's been my experience and the  10 experience of other credit analysts with whom we  11 have had meetings and conferences over the years. A  12 conservative estimate is the capacity that I use.  13 For example, for Mr. Lim is based on his prior  14 capacity to get a mortgage of \$165,000 and his  15 income of \$55,000 per year, I estimate that  16 additional credit capacity to be approximately  17 \$200,000.  18 <b>Q. And in the case of Ms. Serin, your</b>  19 <b>report says that you estimated her additional credit</b>  20 <b>capacity based on her approximate income of \$45,000</b>  21 <b>and attempts to purchase a condo and obtain credit</b>  22 <b>cards; is that true?</b>  23 A. Yes.  24 <b>Q. So because she wanted to borrow money,</b>  25 <b>that she had the ability to borrow money is your</b></p>

<p style="text-align: right;">182</p> <p>1           <b>DEPOSITION OF STAN SMITH, Ph.D.</b>  2   <b>testimony?</b>  3       A.   That she --  4       MR. ALTMAN: Objection. Misstates his  5   testimony. Foundation.  6   BY THE WITNESS:  7       A.   Also prior to this incident, she  8   indicated that she had good credit.  9           Look, all of these folks had to  10   have good credit in order for your client to engage  11   in the RICO type practices that they engaged in.  12   Your client wouldn't have lent these people money if  13   they didn't have good credit, isn't that true?  14   BY MR. LILLIENSTEIN:  15       <b>Q.   That's actually false, Dr. Smith. And</b>  16   <b>what are you basing your statement off of?</b>  17       A.   That's my understanding. Why would  18   your --  19       THE VIDEOGRAPHER: Two minutes, counsel.  20   BY THE WITNESS:  21       A.   I thought there was some testimony to  22   that effect in some deposition somewhere but I'm not  23   going to represent that's an opinion of mine.  24   BY MR. LILLIENSTEIN:  25       <b>Q.   And you've never seen any deposition</b></p>	<p style="text-align: right;">184</p> <p>1           DEPOSITION OF STAN SMITH, Ph.D.  2   BY MR. LILLIENSTEIN:  3       <b>Q.   Do you have to leave, Dr. Smith?</b>  4       A.   I had planned that 1:30 would be the  5   end.  6       THE VIDEOGRAPHER: I have to change the  7   tape now. We're going off the record. The time is  8   1:34 p.m.  9           (Whereupon, there was an  10   intermission.)  11       THE VIDEOGRAPHER: We're back on the  12   record. At the beginning of Tape No. 5. The time  13   is 1:39 p.m.  14       THE WITNESS: And I am just packing up,  15   which both of the attorneys for plaintiffs and  16   defendants agree.  17           (Whereupon, there was a  18   discussion off the record.)  19           (The witness leaves.)  20       THE VIDEOGRAPHER: We're back on the  21   record. The time is 1:41 p.m.  22       MR. ALTMAN: This deposition was scheduled  23   with Dr. Smith to end at 1:30 Central, 2:30 Eastern  24   for his scheduling purposes. That time has elapsed.  25   Plaintiffs don't have any opposition to defendants</p>
<p style="text-align: right;">183</p> <p>1           <b>DEPOSITION OF STAN SMITH, Ph.D.</b>  2   <b>testimony, you've already said; isn't that correct?</b>  3       A.   I've had it related to me but I'm not  4   going to opine about it.  5       <b>Q.   Your report on Mr. Redner says that</b>  6   <b>Mr. Redner had the ability to borrow considerable</b>  7   <b>sums beyond his current lines of credit; is that</b>  8   <b>true?</b>  9       A.   I'm just reviewing the notes here.  10       <b>Q.   I'm looking at Page 3 of your report of</b>  11   <b>Mr. Redner. It says "Mr. Redner had the ability to</b>  12   <b>borrow considerable sums beyond his current lines of</b>  13   <b>credit."</b>  14           <b>Am I not reading that accurately?</b>  15       A.   It's not an opinion. It's his  16   statement. But basically, without knowing exactly  17   what his capacity was, I illustrated at a benchmark  18   of \$10,000 and leave it to the trier of fact to  19   determine how many of those \$10,000 units may have  20   applied. I don't actually give a particular credit  21   capacity for Mr. Redner.  22       THE VIDEOGRAPHER: Counsel, we need to  23   change the tape or finish up the deposition. I have  24   20 seconds left.  25</p>	<p style="text-align: right;">185</p> <p>1           DEPOSITION OF STAN SMITH, Ph.D.  2   taking more time subject to scheduling of Dr. Smith.  3           And the only other issue is that  4   the parties will work out how much time is remaining  5   and then just that defendant needs to provide  6   plaintiffs with a check for Dr. Smith for his time  7   pursuant to the federal rules.  8       MR. LILLIENSTEIN: And I would just add  9   that the scheduling of this to end at 1:30 Chicago  10   time was not our -- not the defendant's choice.  11   That was something imposed upon us by plaintiffs and  12   Dr. Smith, and so the fact that we are stopping now  13   should not be construed in any way as something that  14   the defendants consented to.  15       THE VIDEOGRAPHER: Anything further?  16       MR. LILLIENSTEIN: No. That's it.  17       THE VIDEOGRAPHER: This concludes today's  18   deposition of Dr. Stan Smith. We're off on the  19   record. The time is 1:42 p.m.  20           (Whereupon, the proceedings  21   were adjourned sine die.)  22  23  24  25</p>



<p style="text-align: right;">186</p> <p>1 2 STATE OF _____ ) 3 ) :ss 4 COUNTY OF _____ ) 5 6 7 I, Stan Smith, Ph.D., the witness 8 herein, having read the foregoing 9 testimony of the pages of this deposition, 10 do hereby certify it to be a true and 11 correct transcript, subject to the 12 corrections, if any, shown on the attached 13 page. 14 15 16 _____ 17 Stan Smith, Ph.D. 18 19 20 Sworn and subscribed to before 21 me, this day of 22 , 2010. 23 24 _____ 25 Notary Public</p>	<p style="text-align: right;">188</p> <p>1 DEPOSITION OF STAN SMITH, Ph.D. 2 3 I further certify that I am not counsel 4 for nor in any way related to any of the parties to 5 this suit, nor am I in any way interested in the 6 outcome thereof. 7 I further certify that this certificate 8 applies to the original signed IN BLUE and certified 9 transcripts only. I assume no responsibility for 10 the accuracy of any reproduced copies not made under 11 my control or direction. 12 IN TESTIMONY WHEREOF I have hereunto set 13 my hand this 1st day of November, A.D., 2010. 14 15 16 17 Sheri E. Liss, CSR, RPR, CRR, CLR 18 19 20 21 22 23 24 25</p>
<p style="text-align: right;">187</p> <p>1 DEPOSITION OF STAN SMITH, Ph.D. 2 STATE OF ILLINOIS ) 3 ) SS: 4 COUNTY OF C O O K ) 5 I, SHERI E. LISS, CSR NO. 084-002600, a 6 Certified Shorthand Reporter within and for the 7 State of Illinois, Registered Professional Reporter, 8 Certified Realtime Reporter, do hereby certify that 9 previous to the commencement of the examination, 10 said witness was duly sworn by me to testify; that 11 the said deposition was taken at the time and place 12 aforesaid; that the testimony given by said witness 13 was reduced to writing by means of shorthand and 14 thereafter transcribed into typewritten form; and 15 that the foregoing is a true, correct and complete 16 transcript of my shorthand notes so taken as 17 aforesaid. 18 I further certify that there were present 19 at the taking of the said deposition the persons and 20 parties as indicated on the appearance page made a 21 part of this deposition. 22 23 24 25</p>	<p style="text-align: right;">189</p> <p>1 INSTRUCTIONS TO WITNESS 2 3 Please read your deposition over carefully 4 and make any necessary corrections. You should state 5 the reason in the appropriate space on the errata 6 sheet for any corrections that are made. 7 After doing so, please sign the errata sheet 8 and date it. 9 You are signing same subject to the changes 10 you have noted on the errata sheet, which will be 11 attached to your deposition. 12 It is imperative that you return the original 13 errata sheet to the deposing attorney within thirty 14 (30) days of receipt of the deposition transcript by 15 you. In you fail to do so, the deposition transcript 16 may be deemed to be accurate and may be used in court. 17 18 19 20 21 22 23 24 25</p>

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I wish to make the following changes,  
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